	LAW OFFICES OF ROGER N. GOLDEN 26500 W. Agoura Road, Suite 102 Calabasas, CA 91302 Telephone: (805) 380-4411 State Bar No. 61294 Attorney for Plaintiff, Casa Golondrina, Inc., a California Corporation	Electronically FILED by Superior Court of California, County of Los Angeles 5/19/2023 11:04 AM David W. Slayton, Executive Officer/Clerk of Court, By N. Alvarez, Deputy Clerk		
6 7	SUPERIOR COURT OF T	HE STATE OF CALIFORNIA		
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES			
9				
10	Casa Golondrina, Inc., a California) Corporation,)	Case No. 238TCV11385		
12	Plaintiff)	Complaint for:		
13	VS.	 Breach of Contract Breach of the Covenant of Good Faith and 		
14	The City of Los Angeles; Kevin De Leon;	Fair dealing 3. Declaratory Relief		
15	UNITE HERE Local 11; and Does 1-50,	 4. Interference with Contract; 5. Interference with Prospective Economic Advantage 		
16	Defendants)			
17				
18				
19		RTIES		
20	, ,	lifornia Corporation ("Plaintiff") doing business in		
21	the City and County of Los Angeles, State of Ca	lifornia. Plaintiff is the owner and operator of Casa		
22	La Golondrina Café (the "Café") which has its s	ole place of business located in El Pueblo De Los		
23	Angeles Historical Monument ("El Pueblo"), Los	Angeles, California. Plaintiff is a concessionaire		
24	pursuant to the terms of a Concession Agreement with the City of Los Angeles as assignee of the			
25	prior concessionaire, La Golondrina Cafe, Inc. L7	TD ("Seller"). The Café is and has been for over 90		
26	years a restaurant in the business of selling Mexic	can cuisine to the public at El Pueblo.		
27	2. Defendant, City of Los Angeles ("City	") is a charter city located within the state of		
28	California. The City, through the Board of Comr	nissioners of El Pueblo De Los Angeles Historical		

COMPLAINT

Monument (the "Commission"), administers the provisions of the City charter relating, *inter alia*, to the operation of El Pueblo.

- 3. Defendant, Kevin De Leon ("De Leon") was, at all times material hereto, a member of the Los Angeles City Council (the "Council"). De Leon, Plaintiff is informed and believes and thereon alleges, is a resident of the County of Los Angeles, State of California. The Council has delegated its authority to supervise El Pueblo to the Commission.
- 4. Defendant, UNITE HERE Local 11 ("Local 11") is a labor union which claims to represent over 32,000 workers employed in hotels, restaurants, airports, sports arenas and convention centers throughout Southern California and Arizona.
- 5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1–50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint and Petition to allege their true capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged.
- 6. Whenever reference is made in this Complaint to any act of any Defendant(s), that allegation shall mean that each Defendant acted in some manner with respect to each such acts individually and jointly with the other Defendants.
- 7. Any allegation about acts of any corporate or other business Defendant means that the corporation or other business did the acts alleged through its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.
- 8. At all times material hereto, each Defendant knew or realized that the other Defendants were engaging in or planned to engage in the violations of Plaintiff's rights alleged in this Complaint. Knowing or realizing that the other Defendants were engaging in or planning to engage in unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the unlawful acts and thereby aided and abetted the other Defendants in and/or ratified the unlawful conduct hereinafter alleged.

9. Plaintiff is informed and believes, and thereon allege, that in committing some or all of the acts herein alleged, some or all of the Defendants herein named were acting as the agents, partners, representatives, subsidiaries, affiliates and/or employees of some or all of the other Defendants, and that some or all of the conduct of such Defendants, as complained of herein, was within the course and scope of such relationship.

THE CLAIM

10. Plaintiff filed its claim with respect to the Causes of Action alleged herein with the City on December 16, 2022. The City has failed and refused to respond thereto and, therefore, Plaintiff's claim was deemed rejected.

FACTUAL BACKGROUND

- 11. The Commission was created pursuant to Section 22.621 of the City Charter of the City of Los Angeles.
- 12. Arturo Chavez is the general manager of El Pueblo ("the Manager"). Manager was appointed as such by the Mayor of Defendant City.
- 13. On or about July 30, 2021, Plaintiff and Seller entered into a written purchase and sale agreement for the business and assets of the Café including, without limitation, the assignment of the concessionaire agreement between Seller and the City (the "Concessionaire Agreement").
- 14. On or about September 23, 2021, the Commission unanimously approved the assignment of the Concessionaire Agreement to Plaintiff. Notwithstanding said approval, Plaintiff was not advised of this approval and did not learn of it until February, 2022. Manager failed to inform either Plaintiff or Seller at the time of the approval that the transfer had been approved and he did nothing to process the transfer in December, 2021.
- 15. On or about October 21, 2021, after the Commission approval on September 23, 2021, the approval of the transfer to Plaintiff was forwarded to the City Clerk and then placed on the agenda for the A&P Committee meeting for their November 9, 2021 meeting.
- 16. On or about said date, Plaintiff is informed and believes and thereon alleges that De Leon asked the chair of the A&P committee to have the consideration of the transfer pulled from the agenda because of a "labor dispute."

17. Ms. Vivien Bonzo, the sole shareholder of the Seller, wrote to De Leon immediately
asking what the issue was concerning the alleged "labor dispute" because Seller's contract with
Local 11 had expired and been terminated, all employees of seller have been paid and laid off and
Plaintiff did not have a contract with Local 11 nor have any employees. De Leon never responded

- 18. On or about November 22, 2021, Plaintiff sent an email requesting to meet with De
- 19. On or about November 22, 2021, Plaintiff also sent an email to Kurt Petersen, the Co-President of Local 11 ("Peterson"), in response to a November 4, 2021 request to meet from Peterson. Plaintiff informed Peterson that it was premature for them to engage in a meeting pertaining to the Café or its affairs until the transfer approval was granted.
- 20. On or about November 30, 2021, at the request of Plaintiff, a meeting was arranged between Jennifer Barraza, deputy to De Leon, and Gomez, the president of Plaintiff ("Gomez"), to discuss the issues stalling approval of the transfer. During that meeting, Ms. Barraza said that Local 11 wanted to meet with the Gomez and that it would be easier if "we were all on the same page", and, "if Local 11 was against it, the transfer could even fail a vote in City Council".
- 21. Also during that meeting, Ms. Barraza stated she would advise Gomez with which ordinances/laws Plaintiff was required to comply. None of the promised information concerning the required city ordinances applicable to the Plaintiff's business was ever provided by Ms. Barraza.
- 22. In addition, because of Ms. Barraza's insistence that the meeting be held, Gomez, on behalf of Plaintiff, agreed to meet with Local 11.
- 23. On or about December 3, 2021, Plaintiff received an email from Petersen requesting that Gomez meet with him because "we need to ensure we are on the same page to make a smooth transition". In saying Local 11 wanted to "assure a smooth transition," Peterson implied that there was a a "right of succession" provision in Seller's union contract which required Plaintiff to accept the former contract; however, no such provision exists in the expired contract.
- 24. On or about December 15, 2021, as a result of De Leon's office's "strong recommendation," Gomez met with Peterson from Local 11 and at that meeting Peterson told her that Plaintiff needed to accept the former owners' expired union contract with no changes.

- 25. At the December 15, 2021 meeting, Gomez told Peterson that Plaintiff planned on utilizing less staff by reorienting the operation to save money and make use of technology and Peterson replied, "that will be a problem." Gomez also told Peterson that there was no way that Plaintiff would agree to a contract it never saw and that it would never enter into such a contract without legal representation.
- 26. During December 15, 2021 meeting, Peterson told Gomez that it was Local 11 who had been pressuring De Leon to hold-up the transfer approval.
- 27. Peterson said he would provide a copy of the Seller's union contract for Gomez to review. He also mentioned that 70%, of the former employees wanted to return to work without mentioning their names or positions and the Gomez requested that list which has never been provided.
- 28. On or about December 23, 2021, Gomez emailed Petersen, P. Viera, J. Blasi, reminding them to send Seller's expired union contract, as promised, and asked for the number of employees and their job titles who wished to return to work at the Café. Local 11 never responded.
- 29. On or about January 13, 2022, Gomez emailed Ms. Barraza of De Leon's office advising her that Local 11 had demanded Plaintiff accept the Seller's contract with no negotiation whatsoever and despite the enormous economic pressures in the restaurant industry after Covid. Based on Gomez's conversation with Peterson, Gomez was of the belief that Local 11 would not allow Plaintiff to implement any staffing changes or determine the dining format of its choice. Plaintiff asked that De Leon allow the transfer to proceed. There was no response from De Leon or his office.
- 30. Around this same time frame, Manager orally told Gomez that he was aware that there was no basis for Local 11's claim of succession in the Seller's expired Local 11 contract.
- 31. On or about February 4, 2022, Manager contacted Ms. Bonzo and advised her that there was movement on the transfer issue. Manager, at this time, finally disclosed that the concession transfer was approved on December 21, 2021 because the Council failed to take action as required by the City Charter. He also said the city attorney told him he "would have to assess back rents or else the deal could not go through".
 - 32. Thereafter, Manager added the months of January and February at "full rent" (\$14K/mo)

to the rent demand to Bonzo which totaled, by his calculation, \$58,521.40 and threatened that if that rent were not paid there would be no deal.

- 33. The rent arrears item never went before the Commission as is customary for rent relief and instead was decided, Plaintiff is informed and believes and thereon alleges, unilaterally by Manager and the city attorney. This was not the normal procedure and, in light of the actions by Local 11 and De Leon's office, Plaintiff is informed and believes and thereon alleges that one or both were also involved in the decision-making process.
- 34. Plaintiff is informed and believes and thereon alleges that Local 11 had been made aware of the non-public information regarding the rent arrears by someone who had knowledge of the rent arrears issue. Manager told Bonzo with regard to the rent arrears that Local 11 told him "to charge her everything the next day" and he told her that he had said to Local 11 that he would not do that. Nevertheless, Manager repeatedly made comments to Gomez that "if Ms. Bonzo doesn't pay the back rents, the deal was off."
- 35. Instead of the Board considering the facts of this matter, Manager told Bonzo if she delayed payment, "the Council would have to vote on it and this could take months during which more rent would be assessed at full price."

He also said "the Council might not grant any relief if Local 11 was against it".

- 36. The rent arrears matter with respect to the Café was being handled unlike any rent arrears matter in El Pueblo history.
- 37. Bonzo told Manager she would pay the back rent, however unreasonable, but would only pay it simultaneously with the contract signing by Plaintiff and the City and that was when her check was submitted.
- 38. On or about February 7, March 2, April 7 or 17, June 17, August 24, 2022, Local 11 staged a protest outside the vacant Café building. On February 7, David Gomez, the son of Bertha Gomez asked if the Union had the right to do this and mgr. replied to him, "They can do whatever they want." After several hours on that day, Manager asked them to move the protest elsewhere.
 - 39. On or about February 14, 2022, the eve of the original signing of the agreement with the

City (the "First Signing Meeting"), Manager emailed Ms. Bonzo a letter from Local 11 saying that they were recommending an investigation by the Small Business Administration and the Department of Justice of the PPP loan Bonzo's corporation received months prior during Covid. Local 11 in its letter alleged that the funds were misused because Bonzo never rehired her employees.

- 40. Local 11 cc'd virtually every politician in government that it had connections with its false and defamatory statements about Ms. Bonzo's business practice.
- 41. Manager had earlier mentioned to Ms. Bonzo that Local 11 "knew about the PPP loan" which she interpreted as attempted intimidation by Local 11.
- 42. On the eve of the First Signing Meeting, Local 11 sent an email to the Gomezes with the expired collective bargaining agreement and a 'contract assumption agreement' to sign.
- 43. The information obtained and acted upon by Local 11 on the eve of First Signing Meeting regarding the PPP loan to Seller and the actual date of signing was not public information and can only have been obtained by Local 11 from one or more representatives of the City. The next day at the First Signing Meeting, Gomez asked Manager how Local 11 found out about the signing meeting since it was not public information and Manager responded that "they have friends in all departments".
- 44. Prior to the First Signing Meeting, Manager asked Gomez several times if she had an "out" in her purchase agreement with Ms. Bonzo in case she wanted to back out of the deal. Gomez told Manager she did not.
- 45. On or about February 15, 2022 the assignment agreement between Plaintiff and the City was originally scheduled to be signed. However, as drafted it was unacceptable because it amended the option to extend the lease from belonging to Plaintiff to the City and David Gomez was not listed as primary merchant.
- 46. Following further negotiations, the assignment agreement was amended to make it consistent with the original lease which was being assigned and was finally signed on February 28, 2022. At the second signing meeting on February 28, 2022 ("Second Signing Meeting"), Manager told Gomez that in a "last ditch effort to prevent the transfer", a union representative called the Mayor's office and asked them to "stop the transfer". Manager said the Mayor's representative told

them that "there was nothing they could do". When Ms. Gomez asked who from the mayor's office was contacted, he declined to answer. He made the same comments to Ms. Bonzo in a phone conversation.

- 47. Despite, among other things, Local 11 's interference with him Plaintiff's and Seller's contract, Plaintiff eventually signed the "ASSIGNMENT AND CONSOLIDATION OF AND CONSENT TO TRANSFER INTEREST IN CONCESSION AGREEMENTS" at the Second Signing Meeting pursuant to which the Concession Agreement for the Café (the "Concession Agreement") was assigned to Plaintiff and Plaintiff officially became the record concessionaire as of that date even though, unknown to Plaintiff and Seller, it had been approved, de facto, by the Council's inaction on December 21, 2022. A true and correct copy of the Concession Agreement assigned to Plaintiff is attached hereto as Exhibit "A."
- 48. On or about April 25, 2022, Plaintiff had a general building inspection of the Café conducted by a licensed plumbing contractor to ensure it was in good operating condition. A plumbing video camera revealed several breaks in the main underground plumbing line to the Café. Plaintiff alerted Manager who brought a General Services Department ("GSD") employee to survey the building. The plumbing video inspection done by two plumbing bidders confirmed that the main line is fragile and cracked and will not withstand the power washing of plumbing lines required of all restaurant tenants and must be repaired.
- 49. Plaintiff is informed and believes and thereon alleges that the City has never provided any plumbing repair or improvements to the building in which the Café does business and that the pipes connected to it were put in sometime between the late 1930's or early 1940's.
- 50. Manager asked Plaintiff to provide him with plumbing bids to repair the defective plumbing and Plaintiff obtained two bids both of which estimated the total cost of repair to be approximately \$90,000, including City plans. Following receipt of Plaintiff's estimates, Manager insisted that the Plaintiff was responsible to provide the plumbing repair under the Concession Agreement.
- 51. On or about April 10, 2022, there was a major plumbing problem in the Italian Hall, one of the occupants of El Pueblo, which resulted in a sewage backup. Manager responded by

bringing in General Services Department (GSD) and hiring a plumbing contractor, (overseen by GSD), to provide over 30 feet of piping. The work was done promptly by the City and at no cost to the tenant. Manager told the Gomezes that because there are three tenants in the Italian Hall, they can get free plumbing whereas a single tenant cannot. This explanation is not supported by the provisions in the Concessionaire Agreement where the number of tenants has no impact on who is responsible for the repair.

- 52. Following its inspection of the plumbing for the Café, Plaintiff sent Manager a letter concerning the defective plumbing and the timeline for the plumbing repair was so Plaintiff could plan the reopening of the Café. Plaintiff inquired in light of the Italian Hall repair about the repair of the Café's plumbing. In response, Manager said he needed to speak with the Mayor and Councilman about the issue. The Commission was never asked to hear the matter even though it has jurisdiction over such matters.
- 53. On or about April 28, 2022, Manager prepared a Commission agenda item for the next meeting of the Commission requesting four months of rent abatement for Plaintiff to secure operating permits, make repairs and get the business ready to be opened. Manager pulled the item shortly before the Commission meeting began and after asking the Gomezes to be prepared to testify on behalf of Claimant, he called them to say the item was not going to be heard after all.
- 54. Local 11 sent two representatives to the Commission meeting referred to in paragraph 53 above and during public comment urged the Commission to reject the rent abatement proposal. Prior to the item being pulled, the Gomezes had multiple conversations with Manager where he said the rent abatement would not be problem. Manager expressed surprise when Board VP David Louie say that it was customary to give rent abatement in commercial leases. This type of rent relief and other special considerations have always been granted by the Commission to new restaurant operators on Olvera Street. For example, Andy Camacho and Chiguacle Restaurant are the most recent examples of restaurants receiving.
- 55. On or about May 3, 2022, Plaintiff sent an email to Manager stating that Plaintiff under the Concession Agreement is not obligated to do (plumbing) capital improvements on the building and Plaintiff should not be obligated to pay rent until the Golondrina is fully operable.

56. On or about May 16, 2022, manager had a phone conversation with Gomez and her son, David, and informed them that he would be meeting on May 18, 2022 with De Leon and the Mayor's office to discuss their issues and get back to them.

57. The next day, Bertha Gomez called Manager and asked him if Local 11 was involved in the resolution of the issues affecting Plaintiff and he confirmed it was manipulating the opening of the Golondrina (through the City) and was also involved in the plumbing decision. Gomez and her son, David, had been told by Manager often that "Local 11 is involved and that they aren't going away".

58. On or about May 19, 2022, Manager sent an email to Plaintiff stating that the City Attorney and General Services had reviewed the plumbing work and the Concession Agreement and Claimant would have to pay for the plumbing repair because the main line was not involved and the City was not responsible for any plumbing lines "inside the building". He also said that "the City only had to provide plumbing to the building and the tenants did all the work inside the building". He also advised Plaintiff that the rent abatement "would not be brought back to the Commission", after having said previously that De Leon had simply asked him to rewrite his report.

The Commissioners were never consulted on these matters.

- 59. The Gomezes were told by Manager that if they did the repair the plumbing problems, they would not have to pull a permit and that Manager would find a way to give them five months rent relief, but it all had to stay between them and not go public. David Gomez asked how that was possible and Manager said he would find a way.
- 60. On or about July 1, 2022, Manager advised Plaintiff that the City attorney reviewed the lease and concluded that there is no rent abatement due the Gomezes while they fix the plumbing. Prior Commission reports show the manager and Commissioners of El Pueblo have always worked with new restaurant tenants individually to help them be successful in their start-ups. Both Andy Camacho restaurant and Chiguacle Restaurant received targeted assistance, and Chiguacle even received a liquor license, paid for by the City, when it was discovered there was no liquor license attached to that location.
 - 61. The treatment of Plaintiff described herein is disparate from how other concessionaires at

1	El Pueblo were treated with respect to rent and other City assistance and is discriminatory and		
2	prejudicial to Plaintiff.		
3			
4	FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT (Against Defendant City of Los Angeles and Does 1 -10, inclusive)		
5	62. Plaintiff repeats and realleges paragraphs 1 through 61 above, inclusive, and		
6			
7	incorporates said paragraphs herein as though fully set forth at length.		
8	63. Paragraph 18.1 of the Concession Agreement states:		
9	"City's Code Compliance Obligations. If at any time during the Term of this Concession Agreement, any regulatory or municipal agency determines that repair or construction of		
10	roofs, foundations, structural components of buildings, the exterior surface of outside walls, main plumbing lines, main natural gas lines, and electrical lines up to the main circuit box is		
11	necessary to bring the Premises into compliance with applicable building codes, City shall correct such non-compliance at its sole cost and expense. Temporary relocation of Merchant		
12	or rent abatement during repairs or construction shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the		
13	Commission." (Emphasis added)		
14	64. Paragraph 18.2 states, with respect to the repair and maintenance obligations of Plaintiff,		
15	in relevant part:		
16	"Merchant's Obligations. Merchant shall maintain all facilities and personal property and equipment on the Premises in good condition and repair at Merchant's sole cost and expense at all times during the term of this Concession Agreement. Such maintenance shall conform		
17	to City standards in accordance with Exhibit "F", Facility Maintenance Program."(Emphasis added)		
18	65. Exhibit "F" defines Merchant's obligations under the Facility Maintenance Program as:		
19	"During the term of this contract at Concessionaire's own cost and expense, Concessionaire		
20	shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than FIVE (5) feet, including personal property and equipment, in a clean, safe, wholesome,		
21	and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions." (Emphasis		
22	added)		
23	66. Subsection B of Exhibit F states:		
24	"B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and		
25	personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this contract. Such maintenance shall conform to City standards. For the purposes of this contract, the term		
26	maintenance shall conform to City standards. For the purposes of this contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good City (sic) of repair, as		
27	well a to preserve them for their intended purpose for an optimum useful life." (Emphasis added)		
28			

- 67. Paragraph 17 of the Concession Agreement states:
- "17.1. Easements. City reserves to itself and Merchant hereby grants to City such licenses of easements in or over or under the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits or pipes or for construction of other facilities to serve the Monument or any part thereof, including the premises of any occupant. City shall pay for any alteration required on the Premises as a result of any such exercise, occupancy under or enjoyment of licenses or easements. Further, no exercise, occupancy under, or enjoyment of licenses or easements by City shall result in unreasonable interference with Merchant's use, occupancy or enjoyment of the Premises as contemplated by this Concession Agreement." (Emphasis added)
- 68. No such easement is reserved to Claimant, nor is there any reference to Claimant being responsible for any repairs under the Premises.
- 69. The Concession Agreement is governed by the laws of the State of California law including City Ordinance Sec. 22.620 which provides in relevant part:
 - "(a) There is hereby created a department in City government to be known as the El Pueblo de Los Angeles Historical Monument Authority Department, hereinafter referred to in this chapter as the "Department," which shall operate, manage, maintain and control all of the property, including adjacent and nearby parking lots, included within the El Pueblo de Los Angeles Historical Monument and heretofore operated by the Department of Recreation and Parks, except public streets, sewers in the public streets, Water and Power facilities, street lights, and similar facilities or equipment which are operated, managed, maintained and controlled by City departments other than the Department of Recreation and Parks." (Emphasis added)
- 70. As hereinabove alleged, when requested to make the repairs to the plumbing system under the Café necessary to enable Plaintiff to operate the restaurant, the City refused. Plaintiff is informed and believes and thereon alleges that the Commission was not consulted on this decision.
 - 71. In addition, Paragraph 18.1, supra, of the Concession Agreement provides:
 - "Temporary relocation of Merchant or rent abatement during repairs or construction shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the Commission."
- 72. Notwithstanding the premises cannot be used for their intended purpose and notwithstanding that the City has an affirmative duty to repair the subsurface plumbing providing service to the Café, there has been no rent abatement or other assistance provided and the City seeks to collect "unpaid" rent it claims is due from Plaintiff and threatens Plaintiff with eviction if the alleged "unpaid" rent is not paid.
 - 73. The Concession Agreement is governed by the laws of the State of California law

1	including City Ordinance Sec. 22.620 which provides in relevant part:
2	"(a) There is hereby created a department in City government to be known as the El Pueblo de Los Angeles Historical Monument Authority Department, hereinafter referred to in this chapter as the "Department," which shall operate, manage, maintain and control all of the
4 5	property, including adjacent and nearby parking lots, included within the El Pueblo de Los Angeles Historical Monument and heretofore operated by the Department of Recreation and Parks, except public streets, sewers in the public streets, Water and Power facilities, street lights, and similar facilities or equipment which are operated, managed, maintained and
6	controlled by City departments other than the Department of Recreation and Parks." (Emphasis added)
7	74. As a result of the failure and refusal of the City to comply with its obligations under the
8	Concession Agreement, Plaintiff has been unable to open the Café for business to its damage in an
9	amount to be determined.
LO	75. As a result of City's delays in signing the Concession Agreement and its further refusal
L1	to maintain and repair the pipes and mains serving the Café, Plaintiff has been denied the use,
L2	occupancy and enjoyment of the Premises for at least 10 months suffer the loss of profits and
L3	goodwill which would have otherwise been received by Plaintiff.
L 4	76. By reason of the facts alleged, Plaintiff has been damaged in the sum of not less than
L5	\$250,000 or according to proof at the time of trial.
L6 L7	SECOND CAUSE OF ACTION FOR BREACH OF COVENANT OF GOOD FAITH (Against Defendant City of Los Angeles and Does 1 -10, inclusive)
L 8	77. Plaintiff repeats and realleges paragraphs 1 through 61 and 63 through 75, inclusive,
L 9	and incorporates said paragraphs herein as though fully set forth at length.
20	78. Defendant City's conduct, as alleged herein, constitutes a breach of the covenant of good
21	faith and fair dealing implied in every contract under California law.
22	79. By reason of the facts alleged, Plaintiff has been damaged in the sum of not less than
23	\$250,000 or according to proof at the time of trial.
24	
25	
26 27	THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF (Against Defendant City of Los Angeles and Does 1 -10, inclusive)
28	80. Plaintiff repeats and realleges paragraphs 1 through 61 above and 63 through, inclusive,

FOURTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH CONTRACT

(Against Defendants Local 11 and De Leon)

- 86. Plaintiff repeats and realleges paragraphs 1 through 61 above and 63 through 75, inclusive, and incorporates said paragraphs herein as though fully set forth at length.
- 87. Plaintiff is informed and believes and thereon alleges that Defendants Local 11 and De Leon at all times relevant herein, were aware of Plaintiff's agreement with Seller to transfer and performance of the Concession Agreement to Plaintiff and the operation of the Café by Plaintiff and that Defendant's actions herein alleged would, inter alia, prevent Plaintiff from obtaining timely transfer of the Concession Agreement, from opening the Café, including inducing the City to breach the Concession Agreement as herein alleged, and from operating Café for Plaintiff's benefit.
- 88. Plaintiff is informed and believes and thereon alleges that Defendants De Leon and Local 11 conspired with and/or aided and abetted each other in interfering with, inter alia, the transfer and performance of the Concession Agreement and the operation of the Café, including inducing the City to breach the Concession Agreement as herein alleged, in order to accomplish the plan of Local 11 to interfere with the said transfer, performance and operation unless Plaintiff acquiesced in its plan to compel Plaintiff to sign a collective bargaining agreement with it even though Plaintiff had no employees and was not doing business (the "Local 11 Plan"). Plaintiff is further informed and believes and thereon alleges that De Leon believed and intended by participating in and/or aiding and abetting the Local 11 Plan he would obtain a political or other personal benefit from Local 11 by reason of his said participation.
- 89. Plaintiff is informed and believes and thereon alleges that Defendants Local 11 and De Leon, and each of them, knew or reasonably should have known that their actions alleged herein would in fact interfere or could reasonably be expected to interfere with, inter alia, the transfer and performance of the Concession Agreement, including inducing the City to breach the Concession Agreement as herein alleged, and the operation of the Café for Plaintiff's benefit.
- 90. Plaintiff is informed and believes and thereon alleges that by their conduct, as alleged above, Defendants Local 11 and De Leon intended to deprive Plaintiff of, inter alia, the benefit of the transfer and performance of the Concession Agreement, including inducing the City to breach

the Concession Agreement as herein alleged, and the operation of the Café and/or other benefits which would have been derived therefrom for the purpose and with the intent of consummating the Local 11 Plan.

- 91. As a proximate result of, inter alia, Defendants Local 11 and De Leon's actions, jointly and severally, as alleged above, have interfered with Plaintiff's Concession Agreement, including with the City's obligation to timely approve the transfer of the Concession Agreement and Café to Plaintiff, to repair the plumbing Property and to provide a rent concession to Plaintiff during the period of time the work on the plumbing was not complete.
- 92. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct, as alleged above, Plaintiff has suffered damages in an amount not less than \$250,000 or according to proof at the time of trial. Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount of damages when they have been ascertained.
- 93. The acts of Defendants Local 11 and De Leon, and each of them, jointly and severally, were and continue to be willful, malicious, intentional, fraudulent, oppressive and in conscious disregard of the rights of Plaintiff and should be punished by having an award of punitive and exemplary damages imposed against said Defendants, and each of them, in an amount to be determined at the time of trial.

FIFTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

(Against Defendants Local 11 and De Leon)

- 94. Plaintiff repeats and realleges paragraphs 1 through 61, 63 through 75, and inclusive, and incorporates said paragraphs herein as though fully set forth at length.
- 95. As a proximate result of the actions of Defendants Local 11 and De Leon, as alleged herein, said Defendants and each of them, jointly and severally, have intentionally interfered with Plaintiff's prospective economic advantage arising from the Concession Agreement and the operation of the Café including, without limitation, lost profits and good will.
- 96. Plaintiff is informed and believes and thereon alleges that Defendants De Leon and Local 11 conspired with and/or aided and abetted each other in interfering with, inter alia, the

transfer and performance of the Concession Agreement and the operation of the Café, including inducing the City to breach the Concession Agreement as herein alleged, and the benefits which Plaintiff would have derived therefrom, in order to accomplish the plan of Local 11 to interfere with the said transfer, performance and operation unless Plaintiff acquiesced in its plan to compel Plaintiff to sign a collective bargaining agreement with it even though Plaintiff had no employees and was not doing business (the "Local 11 Plan"). Plaintiff is further informed and believes and thereon alleges that De Leon believed and intended by participating in and/or aiding and abetting the Local 11 Plan he would obtain a political or other personal benefit from Local 11 by reason of his said participation.

- 97. Plaintiff is informed and believes and thereon alleges that Defendants and each of them, jointly and severally, knew or should have known of these prospective economic advantages.
- 98. Plaintiff is informed and believes and thereon alleges that Defendants and each of them, jointly and severally, intended, knew or should have known that the prospective economic advantages arising from the Concession Agreement and the operation of the Café would be disrupted by reason of their conduct herein alleged.
- 99. As a direct, proximate, and foreseeable result of the actions of Defendants Local 11 and De Leon and each of them, jointly and severally, as alleged herein, Plaintiff has suffered damages in an amount not less than \$250,000 or according to proof at the time of trial. Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount of damages when they have been ascertained.
- 100. The acts of Defendants Local 11 and De Leon, and each of them, jointly and severally, were and continue to be willful, malicious, intentional, fraudulent, oppressive and in conscious disregard of the rights of Plaintiff and should be punished by having an award of punitive and exemplary damages imposed against said Defendants, and each of them, in an amount to be determined at the time of trial.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as

9. On all causes of action for which attorneys' fees may be awarded pursuant to the

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1	governing contract, by statute or otherwise, an award of reasonable attorneys' fees; and			
2	10. Such other and further relief as the Court may determine to be just and equitable.			
3	10. Such other and remor as the Court may determine to be just and equidable.			
4	Dated: May 15, 2023 Law Offices of Roger N. Golden			
5	Euw Offices of Roger 14. Golden			
6				
7	By OR N. LOW			
8	Roger N. Golden, Attorney for Plaintiff, Casa Golondrina, Inc.			
9	Cusu Gormania, inc.			
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CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK, COUNCIL/PUBLIC SERVICES DIVISION ROOM 395, CITY HALL

DATE:	Februar	y 28, 2022)

(PLEASE DO NOT STAPLE THE CONTRACT FOR THE CLERK'S FILE)

FORM MUST BE TYPEWRITTEN

FROM (DEPARTMENT): El Pueblo	
	PHONE: (213) 485-6855
CONTRACT NO.: C-119123	COUNCIL FILE NO.: 11-0499 S-1
ADOPTED BY COUNCIL: 5-31-11 DATE DATE DATE	NEW CONTRACT 1s AMENDED AND RESTATED ADDENDUM NO SUPPLEMENTAL NO CHANGE ORDER NO AMENDMENT
CONTRACTOR NAME: W-17 (B) La Golondrir	na Cafe, Inc. LTD
TERM OF CONTRACT: 11/1/10	THROUGH:
TOTAL AMOUNT: 1st year rental amount (\$75	5,066.00)
PURPOSE OF CONTRACT:	
Olvera Street Concession Agreement	

ASSIGNMENT AND CONSOLIDATION OF AND CONSENT TO TRANSFER INTEREST IN CONCESSION AGREEMENTS

This Assignment and Consolidation of, and Consent to Transfer Interest in, Concession Agreements ("Amendment") is entered into by and among: (i) the City of Los Angeles ("City"), acting by and through its Board of El Pueblo de Los Angeles Historical Monument Authority Commissioners ("Commission"), located at Suite 400, 125 Paseo de la Plaza, Los Angeles, California 90012; (ii) La Golondrina Café, Inc. LTD ("Assignor"); and (iii) Casa Golondrina, Inc. ("Assignee") (collectively "Parties").

RECITALS

- 1. Recitals. This Amendment is made with reference to the following facts and objectives:
 - 1.1. Underlying Concession Agreements. City and La Golondrina Café, Inc., LTD entered into certain Concession Agreements, Contract Numbers C-119124 and C-119123, attested by the City Clerk on July 14, 2011 ("Concession Agreements"), attached as Exhibit A and Exhibit B, respectively, covering spaces W-17A and W-17B, respectively, on Olvera Street, Los Angeles California 90012 ("Consolidated Premises"). The Concession Agreements have a term of 20 years, commencing November 1, 2010, and continuing through October 31, 2030, with an option for an additional 20 years.
 - 1.2. **Contemplated Assignment.** Assignor now desires to assign to Assignee, and Assignee now desires to assume from Assignor, all of Assignor's right, title, and interest in the Concession Agreements, and City desires to consent to such assignment and assumption, as more particularly set forth below.
 - 1.3. **Nature of Assignee.** Assignee represents to the City (with the understanding that the City is materially relying on such representations) that Bertha A. Gomez is the majority shareholder of Assignee, and that Bertha A. Gomez and David R. Gomez together own a 100% ownership stake in Assignee.
 - 1.4. **Authority for City's Consent.** The Commission authorized consent to the abovementioned assignment at its September 21, 2021 meeting (Board Report Number 21-0009). The Commission's action was deemed approved by the Los Angeles City Council as of December 21, 2021 (Council File No. 21-1238).
 - 1.5. **Consolidation.** Pursuant to the instruction of the Commission in its September 21, 2021 action, City and Assignee agree, in the interest of administrative economy, to consolidate the management of the Consolidated Premises into one agreement, as further set forth below.

ASSIGNMENT

2. Effective Date of Transfer of Interest. This Amendment shall take effect on the date the City Clerk attests this assignment below ("Effective Date"), and Assignor shall give possession of the Consolidated Premises to Assignee on that date.

- 3. Assignment and Assumption.
 - 3.1. Assignment and Assumption. Upon the Effective Date, Assignor assigns and transfers to Assignee all of Assignor's right, title, and interest in the Concession Agreements, and Assignee accepts such assignment and assumes and agrees to perform, from the Effective Date, as a direct obligation to City, all of the Merchant's obligation under the Concession Agreements ("Assignment").
 - 3.2. **Merchant Name.** Upon the Effective Date, the Assignee shall become the "Merchant" (as defined and used in the Concession Agreements). Accordingly, the name of the Merchant as referenced in the Concession Agreements is amended to read "Casa Golondrina, Inc."
 - 3.3. **Primary Merchant.** The Primary Merchant under Section 1.9 of the Concession Agreements shall be listed as David R. Gomez.
 - 3.4. Restriction of Assignment and Transfer. Pursuant to Section 12.1.1.2 of the Concession Agreements, this is a one-time assignment, and no further assignment under Section 12.1.1.2 shall be permitted. The Parties agree that any change by Assignee in the form of its legal organization (such as, for example, a change from a corporation to a limited partnership); any transfer of Assignee's assets to another person or legal entity; or any other transfer of interest, including the transfer of stock of the corporation or the merger or sale of a parent corporation, effecting a change in identity of the persons exercising effective control of Assignee, will be deemed an assignment and transfer of interest of the Concession Agreements. The Parties further agree that the Assignee's right to future transfers of interest to certain family members, as specified in Section 12.1.1.1 of the Concession Agreements, includes the right to transfer ownership of all, or a portion of, Casa Golondrina, Inc., so long as such transfer of corporate ownership follows the transfer of interest process set forth in this Amendment and in Article 12 of the Concession Agreements.

CONSENT

- **4. City's Consent.** Subject to the terms and conditions set forth in this Amendment, City consents to the Assignment without waiver of any restriction concerning future assignments and transfer.
 - 4.1. Transfer of Interest-Conditions. Assignor and Assignee represent to the City (with the understanding that City is materially relying on such representation) that the Assignment is from the Assignor to a corporation whose majority owner is another existing Olvera Street merchant who has been a concessionaire since at least 1999, and the Concession Agreements are assigned to, or placed in trust with, a single designee for all concession purposes.
 - 4.2. Rules and Regulations. All terms and conditions of the Concession Agreements, including the Rules and Regulations incorporated therein, shall be binding upon Assignee immediately upon the Effective Date.

4.3. Standard Provisions. Notwithstanding the language in Section 4.2 above, Assignee agrees to be bound by and consent to the incorporation of the Standard Provisions for City Contracts (Rev. 10/21) [v.4], attached as Exhibit C. The Standard Provisions for City Contracts (Rev. 10/21) [v.4] shall hereby replace the Standard Provisions for City Contracts (Rev. 3/09), which were incorporated by reference in Section 22.1 of the Concession Agreements. Assignee agrees that throughout the remaining term of the Concession Agreements, any reference to Standard Provisions shall mean the Standard Provisions for City Contracts (Rev. 10/21) [v.4].

CONSOLIDATION

- 5. Consolidation of Concession Agreements.
 - 5.1. **Consolidation of Identical Content.** The terms and conditions of Contract Numbers C-119124 and C-119123, apart from the exceptions set forth in this Amendment, are identical. Therefore, upon the Effective Date of this Amendment, the Parties agree that the Concession Agreements shall be merged into one consolidated concession agreement ("Consolidated Agreement"). All consolidated terms and conditions shall remain the same except as set forth below. Any future amendments and assignments that purport to be made to either of the former Concession Agreements shall instead be applicable to this Consolidated Agreement.
 - 5.1.1. **Section 1.1.** The location of the Merchant's principal office referenced in Section 1.1 shall be amended to state "W-17A and W-17B."
 - 5.1.2. **Section 1.2.** Section 1.2 is amended to read as follows:
 - 1.2 Premises. That certain premises (hereinafter "Premises") situated in the City of Los Angeles, County of Los Angeles, State of California, and identified as [Space numbers W-17A and W-17B] as described in Exhibits A-1 and A-2. Such Premises contain 5,003 square feet of GCARA (as defined in Section 3.3) for W-17A and 1757 square feet of GCARA for W-17B, and are located within El Pueblo de Los Angeles Historical Monument ("Monument")(and portions thereof commonly referred to as "Olvera Street"), as delineated on the plans attached to this Concession Agreement as Exhibits B-1 and B-2 and incorporated herein by this reference (see Article 3, page 3 for further provisions). A "Puesto" is a stand, and further defined as any Premises situated between and in the center of the West and East sides, or adjacent to the Plaza, of Olvera Street, and as designated as a "Puesto" by the Commission.
 - 5.1.3. **Section 2.1.** The Premises' address in Section 2.1 is amended to state, "W-17A and W-17B."
 - 5.1.4. **Section 6.2.** The first paragraph of Section 6.2 is amended to read as follows:
 - **6.2. Rent Calculation.** Rent shall be due as of November 1, 2010. A two-tiered rent structure shall be available to Merchant as provided in this Article. "Prior Rent" is the rental rate in effect immediately prior to the rent set by the Commission

on April 1, 2010. Merchant's Prior Rent was \$5,631 for W-17A and \$1,238 for W-17B. The Merchant's rent established by the Commission on April 1, 2010, was \$10,006 for W-17A and \$2,424.66 for W-17B. In no event shall Merchant pay rent less than Prior Rent. At the time of execution of this Concession Agreement, Merchant shall elect and select one of the three (3) rental rates set forth in the herein-below listed Tiers, namely, Tier One A, Tier One B or Tier Two. Tier One B rent is only available to the Merchant at the Commencement of the Concession Agreement and must be selected by the Merchant at the time of execution of the Concession Agreement. Tier One B rent also shall be available to an assignee who is an immediate family member as defined in Section 12.1.1.1, provided the assignment is made by the Merchant without an exchange of consideration (for example, Merchant receives no money or anything else of value from the assignee or anyone else) and provided that the assignee completes the form in Section 6.2.2.1. Tier Two hardship rent shall be available only to an assignee starting the sixth year after the assignment and only if the auditor determines assignee qualifies for Tier Two hardship rent. Merchant shall designate said election and selection by placing merchant's initials in the blank next to the listed Tier caption.

5.1.5. **Section 7.1.** The last sentence of Section 7.1 is amended to read as follows:

In other words, if the Extension Index has increased over the Beginning Index, the Base Rent for the following Concession Agreement Year shall be set by multiplying the Rent for the first (1st) Concession Agreement Year (i.e., \$75,066.00 per year for W-17A and \$17,178.00 per year for W-17B) by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. In no event, however, shall the Rent for a Concession Agreement Year ever be less than the Rent in effect immediately preceding such Concession Agreement Year.

- 5.1.6. **Signature Pages.** Each of the signature pages of the Concession Agreements, beginning on page 33 of each agreement and continuing through the notary index following page 34 of the agreements, is incorporated in the Consolidated Agreement.
- 5.1.7. **Waiver and Release.** Each of the different versions of the "Olvera Street Merchant Waiver and Release" of the Concession Agreements, one applicable to W-17A and the other applicable to W-17B, is incorporated in the Consolidated Agreement.
- 5.1.8. **Exhibit A.** Each of the different versions of Exhibit A of the Concession Agreements, one being a site plan for W-17A, and the other being a site plan for W-17B, is incorporated in the Consolidated Agreement. Exhibit A to Contract C-119124 shall become Exhibit A-1 to the Consolidated Agreement. Exhibit A to Contract C-119123 shall become Exhibit A-2 to the Consolidated Agreement.
- 5.1.9. **Exhibit B.** Each of the different versions of Exhibit B of the Concession Agreements, one being a floor plan for W-17A, and the other being a floor plan for W-17B, is incorporated in the Consolidated Agreement. Exhibit B to Contract C-119124 shall become Exhibit B-1 to the Consolidated Agreement. Exhibit B to Contract C-119123 shall become Exhibit B-2 to the Consolidated Agreement.

- 5.1.10. **Exhibit E.** Each of the different versions of Exhibit E of the Concession Agreements, one applicable to W-17A, and the other applicable to W-17B, is incorporated in the Consolidated Agreement. Exhibit E to Contract C-119124 shall become Exhibit E-1 to the Consolidated Agreement. Exhibit E to Contract C-119123 shall become Exhibit E-2 to the Consolidated Agreement.
- 5.1.11. **Exhibit G.** Each of the different versions of Exhibit G of the Concession Agreements, one applicable to W-17A, and the other applicable to W-17B, is incorporated in the Consolidated Agreement. There being an existing Exhibit G-1 to the Concession Agreements, Exhibit G to Contract C-119124 shall become Exhibit G-2 to the Consolidated Agreement. Exhibit G to Contract C-119123 shall become Exhibit G-3 to the Consolidated Agreement.
- 5.1.12. **Exhibit H.** Each of the different versions of Exhibit H of the Concession Agreements, one applicable to W-17A, and the other applicable to W-17B, is incorporated in the Consolidated Agreement. There being an existing Exhibit H-1 to the Concession Agreements, Exhibit H to Contract C-119124 shall become Exhibit H-2 to the Consolidated Agreement. Exhibit H to Contract C-119124 shall become Exhibit H-3 to the Consolidated Agreement.
- 5.1.13. **Miscellaneous Attachments.** Each of the different versions of the document titled "First Source Hiring Ordinance (FSHO) Form: FSHO-X" attached to the Concession Agreements, one applicable to W-17A, and the other applicable to W-17B, is incorporated in the Consolidated Agreement.

6. Notices.

- 6.1. Notices. All notices and demands which may or are to be required or permitted to be given by any party to the others hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States registered or certified mail, postage prepaid, return receipt requested, or transmitted by facsimile, in which case the receiving parties shall immediately confirm receipt of such notice. All notices are effective upon receipt. For the purposes of such notices, the addresses for the parties are set forth in Section 6.2 below. Any party may from time to time designate another person or place in a notice.
- 6.2. **Notices Where Sent.** All notices given under this Amendment that are mailed or telecopied shall be addressed to the respective parties as follows:

To City:

City of Los Angeles El Pueblo de Los Angeles Historical Monument Authority 125 Paseo de la Plaza, Suite 400 Los Angeles, CA 90012-2967 To Assignee:

Casa Golondrina, Inc. Attention: Bertha A. Gomez W-17 Olvera Street Los Angeles, CA 90012

7. Insurance. Assignee shall obtain and maintain throughout the term of the Consolidated Agreement, at Assignee's own expense, the coverages and limits of insurance not less than the amounts and types listed in Exhibits H-1, H-2, and H-3 of the Consolidated Agreement. Assignee shall submit to City written evidence of such coverage prior to the Effective Date.

8. Miscellaneous Provisions.

- 8.1. Entire Agreement. This Amendment constitutes the entire and complete agreement between the Parties hereto with respect to the Assignment, and no agreement or understanding between the Assignor and Assignee outside of this Amendment shall be binding upon the City. No provision of this Amendment shall be amended or supplemented except by an agreement in writing signed by all of the Parties hereto. No party has been induced to enter into this Amendment, nor is any party relying upon any representation or warranty outside those expressly set forth in this Amendment. The Amendment cannot be altered, changed, modified or added to, except as approved in writing by the City Council of City of Los Angeles and signed by the General Manager of the El Pueblo Department and by Assignee, or its successors in interest.
- 8.2. Counterparts. This Amendment may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The Parties further agree that facsimile signatures or signatures scanned into Portable Document Format (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.
- 8.3. **Resolution of Inconsistencies.** In the event of any inconsistency between the provisions of this Amendment and/or attached exhibits, the inconsistency shall be resolved by giving precedence in the following order: (1) this Amendment, exclusive of attachments; (2) Exhibit A; (3) Exhibit B; and (4) Exhibit C.

[Signature Page Follows]

IN WITNESS WHEREOF, CITY OF LOS ANGELES, a municipal corporation, acting by and through its El Pueblo de Los Angeles Historical Monument Authority Commission, La Golondrina Café, Inc. LTD, Assignor hereunder, and Casa Golondrina, Inc., Assignee hereunder, have caused this Amendment to be executed as of the date of the last signatory hereto.

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APPROVED AS TO FORM: MICHAEL N. FEUER, City Attorney By: Joshua M. Templet Deputy City Attorney	CITY: CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION
Digitally signed by Joshua M. Templet	By: ARTURO CHAVEZ General Manager
Templet Date: 2022.02.28 14:15:38 -08'00'	DATE: 2/28/22
ATTESTED: HOLLY L. WOLCOTT, City Clerk By:	ASSIGNOR: La Golondrina Café, Inc. LTD. By: Title: DATE: 2-23-22
ASSIGNEE: Casa Golondrina, Inc. By: Sulka Some Title: CEO	
DATE: 3/1/2022	



OLVERA STREET MERCHANT CONCESSION AGREEMENT

BETWEEN CITY OF LOS ANGELES AND La Colordrina Cafe, Inc. 17

ARTICLE 1. BASIC PROVISIONS

1.1. Date and Parties. This Concession	Agreement ("Agreer	ment") is betwe	een City of
Los , Angeles, as	Owner	("City")	and
LA Goldadina Cate In	: LTD		
as Merchant ("Merchant"). Merchant is doing bus	iness as La 6	almarina	Case Inc. LIO
[dba-name], with principal offices at	W-LA		v ,
[Merchant's address]. City is a municipal corpora	tion, organized unde	er the laws of th	ne State of
California. Except as specified in Section 1.	8 below, for purpo	ses of this C	oncession
Agreement and the approvals required hereunde	r, the City acts throu	ugh its El Pueb	olo de Los
Angeles Historical Monument Authority Commiss	ion ("Commission"),	, 125 Paseo de	e la Plaza,
Suite 300, Los Angeles, California 90012, or any lawfully designated successor entity.			
-		_	
1.2. Premises. That certain premises (h	ereinafter "Premises	s") situated in f	the City of
Los Angeles, County of Los Angeles, State	of California, and	d identified as	s [Space-
number $W^{-1/H}$] as described in	Exhibit A. Su	uch Premises	contain
5003 square feet of G	SCARA (as defined	in Section 3.3) and are

- Los Angeles, County of Los Angeles, State of California, and identified as [Space-number \(\frac{\psi}{\psi} \) | A \(\frac{\psi}{\psi} \) as described in Exhibit A. Such Premises contain square feet of GCARA (as defined in Section 3.3) and are located within El Pueblo de Los Angeles Historical Monument ("Monument")(and portions thereof commonly referred to as "Olvera Street"), as delineated on the plan attached to this Concession Agreement as Exhibit B and incorporated herein by this reference (see Article 3, page 3 for further provisions). A "Puesto" is a stand, and further defined as any Premises situated between and in the center of the West and East sides, or adjacent to the Plaza, of Olvera Street, and as designated as a "Puesto" by the Commission.
- **1.3. Term.** Twenty (20) years ("**Term**") commencing on the Execution Date. (see Section 5.1, page 8, for further provisions). Subject to the conditions of Section 23.18 of this Concession Agreement, Merchant shall also have one (1) twenty-year (20-year) option to extend the Term of the Concession Agreement.
- **1.4.** Rent as defined in this Concession Agreement ("Rent") is payable on the first (1st) day of each month.
- **1.5. Security Deposit.** ("**Security Deposit**"). (See *Section 10.1*, *page16*, for further provisions.) The Merchant shall pay to the City a security deposit equal to two month's rent, payable in equal installments over a period of twenty-four (24) months commencing on the Execution Date of the Concession Agreement.
 - **1.6.** Permitted Use. (see Section 4.1, page 4, and Exhibit E for further provisions).
- 1.7. Capacity of City as Owner. Except where clearly and expressly provided otherwise in this Concession Agreement, the capacity of the City in this Concession Agreement shall be as an owner only, and any obligations or restrictions imposed by this Concession Agreement on City shall be limited to that capacity and shall not relate to or otherwise affect any activity of the City of Los Angeles in its governmental capacity, including, but not limited to, enacting laws, inspecting structures, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the City of Los Angeles pursuant to federal, state, or local law.

- City's Representative. The City's El Pueblo de Los Angeles Historical Monument Authority Department ("El Pueblo Department"), or any lawfully designated successor, shall be City's representative with respect to all matters pertaining to this Concession Agreement except that approval of this Concession Agreement and approval of any revision or modification to this Concession Agreement must comply with Los Angeles Charter Section 370 and Los Angeles Administrative Code Section 10.5 (as amended from time to time), including but not limited to approval by the Los Angeles City Council for the Concession Agreement and any applicable Concession Agreement revisions or modifications. Said approval may be granted or withheld in the City's sole discretion (Section 26.18). The Los Angeles City Attorney must approve the Concession Agreement as to form. The defined term "General Manager" shall mean the General Manager of the El Pueblo Department, or such successor position as the City Council of the City of Los Angeles may designate. The defined term shall also include any person designated by the General Manager to act on behalf of the General Manager, either generally or for specified activities under this Concession Agreement. The defined term "Property Manager" shall mean the person designated by the General Manager to act on behalf of City in matters described in this Concession Agreement or in the Exhibits to this Concession Agreement. Merchant shall be notified in writing of such designation and the specific authority granted to any designee.
- Merchant Primary Merchant Designation. In the event that Merchant as defined 1.9. in Section 1.1 of this Concession Agreement includes or is a legal entity (including but not limited to, any corporation, limited liability company, partnership, or trust) or multiple individuals, or is amended to include more than one (1) single individual or legal entity, Merchant hereby designates as the Primary, Merchant ("Primary Merchant") under this Concession Agreement the individual known as VIVIED BONZO . Acts and omissions of the Primary Merchant will be deemed to occur with the advance knowledge and consent of all of the individuals or legal entities comprising the Merchant, inure to the benefit of the Merchant and be the responsibility of the Merchant. Acts and omissions by the Primary Merchant are deemed to be the acts and omissions of each and all persons and entities comprising the Merchant. The Primary Merchant may designate a Contact Person ("Contact Person"). City may treat the Contact Person as the Merchant for administration of the Concession Agreement rights and obligations, including providing notice under the Concession Agreement. Each separate. individual or legal entity comprising Merchant under this Concession Agreement agrees to hold the City harmless from any and all costs and expenses of any nature rising out of any act or omission of the Primary Merchant and the City's conduct arising from the acts and omissions of Primary Merchant. References in this Concession Agreement to Merchant are deemed to include references to Primary Merchant.
 - **1.9.1. Joint and Several Obligations**. Notwithstanding the provisions of Section 1.9, above, each individual or legal entity comprising Merchant shall be jointly and severally liable for the obligations, acts and omissions of each and every individual or legal entity comprising Merchant and the agents, employees, independent contractors, licensees, as well as to all persons and entities claiming through any of these persons or entities.
- **1.10. Prior Concession Agreement**. Merchant is a party to a prior agreement between City and Merchant. This Concession Agreement replaces any such prior agreement and any contract oral or written relating to the Premises and the rights and benefits thereunder are hereby terminated.
- **1.11. Execution Date**. The defined term "**Execution Date**" shall mean the date the Office of the City Clerk of Los Angeles attests this Concession Agreement.

ARTICLE 2. NOTICES

- 2.1. Notices. All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States registered or certified mail, postage prepaid, return receipt requested, or transmitted by telecopier (e.g., fax), followed by hard copy sent by United States regular mail, in which case the receiving party shall immediately confirm receipt of such notice. All notices are effective upon receipt. The Premises' address of _________ shall be included in all notices. For the purpose of notice, the addresses for the parties are set forth in Section 2.2 below. Either party may from time to time designate another person or place as the party's designee for notice purposes, provided that the notice of change in designee complies with the notice provisions of Section 2.1.
- **2.2. Notices Where Sent.** All notices given under this Concession Agreement which are mailed or telecopied shall be addressed to the respective parties as follows:

To City
City of Los Angeles
El Pueblo de Los Angeles Historical Monument
Authority Department
125 Paseo de la Plaza, Suite 300
Los Angeles, California 90012
Telecopier: 213-485-8238

To Merchant

Notice-address

Telecopier:

ARTICLE 3. PREMISES

W-17 Olvera St Los Angeles CA 90012

ANTIGEL 3. FINEWISE

- **3.1. Rental of Premises**. The City rents to Merchant the Premises described in Section 1.2 of this Concession Agreement.
- 3.2. Acceptance of Premises. Merchant shall take the Premises in an "as is" condition as of the Concession Agreement Execution Date. Subject to the City's obligations, if any, in Sections 16.2, 18.1 and 18.3, with respect to the Monument Systems. City is not responsible for any build-out or other preparation of the Premises for occupancy by Merchant. Merchant agrees to perform all work necessary to prepare said space for occupancy at Merchant's sole cost and expense. Merchant waives the right to make repairs at the expense of City. Merchant waives the benefit of the provisions of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. It shall be Merchant's obligation, at Merchant's sole cost and expense, to install any and all fixtures, equipment, supplies or other material necessary to open for and thereafter conduct business. Any painting or other redecoration which Merchant desires shall also be done at Merchant's sole cost and expense.

City and Merchant acknowledge that City has acquired Premises by a quit-claim deed executed by the State of California on October 27, 1988, a copy of which is attached as Exhibit I.

3.3. Definition of GCARA. Gross Concession Agreement Rented Area (hereinafter known as "GCARA") means, with respect to the Premises and all other rentable areas, the

number of gross square feet of floor area for the exclusive use by the occupant thereof (whether present or future) and its customers, excluding Monument maintenance storage areas and basement spaces. Said area shall be measured from the exterior face of exterior walls and the exterior face of service corridor walls, the line along the front of the Premises where the Premises abuts the Monument or sidewalk, and the center line of any wall the Premises shares with other premises of the Monument. No deduction from GCARA shall be made for columns, stairs, elevators or any interior construction or equipment.

This Concession Agreement reflects the rental rate applicable for the Premises (for example, retail, office, storage, etc.).

ARTICLE 4. MERCHANT'S CONDUCT OF BUSINESS

- Use. Merchant shall use the Premises solely for the purposes specified in Exhibit E. Merchant shall not use or permit the Premises to be used for any other purpose without City's prior written consent, which may be granted or withheld in the City's sole discretion. Merchant shall not use or occupy the Premises in violation of law and shall discontinue any use of the Premises which is declared by any governmental authority to be a violation of law. Merchant, at Merchant's sole cost and expense, shall comply with any directive of any governmental or municipal authority which imposes any duty upon Merchant or City with respect to the Premises or the use or occupation thereof, which arises due to the nature of Merchant's use or occupancy Notwithstanding the foregoing, Merchant shall not be responsible for compliance with directives which are the responsibility of City as provided in this Concession Agreement. Merchant shall not commit, or suffer to be committed, any waste or nuisance in its occupancy of the Premises. Merchant shall not commit, or suffer to be committed, or any act which may increase the cost of public liability or any other insurance City elects to carry in connection with the ownership, management, maintenance and operation of the Premises or which is otherwise in contravention of insurance underwriting regulations, guidelines and practices in use by City, as amended Merchant shall not, without the consent of the City, suggest or use the name "El Pueblo de Los Angeles" or "Olvera Street" for any purpose other than as an address of the business to be conducted by Merchant in the Premises. Merchant shall not do or permit the doing of anything in connection with Merchant's business or advertising which, in the reasonable judgment of the City, may confuse or mislead the public as to any relationship between City and Merchant. Merchant shall not leave the Premises unoccupied or vacant during its tenancy except prior to receipt of a certificate of occupancy. Merchant further covenants and agrees to continuously operate its business in compliance with all applicable federal, state, and local environmental statutes, rules and regulations including but not limited to the Rules and Regulations established by City and contained in Exhibit C of this Concession Agreement. Said Rules and Regulations may be modified by City, acting through its Commission, upon thirty (30) days' notice. Merchant shall indemnify and hold City harmless from any and all costs and expenses of any nature rising out of any claim or proceeding, administrative or otherwise, with respect to the Rules and Regulations.
- 4.2. Hours of Retail Business; Continuous Operation. Merchant shall maintain the minimum hours of operation and be open for business at the times of day as specified under the City's Rules and Regulations as contained in Exhibit C, and as may be amended by the Commission from time to time. With respect to any business controlled by governmental regulations or labor union contracts in its hours of operation, the foregoing provisions shall be subject to the hours of operation so prescribed by such governmental regulations or labor union contracts. Merchant shall operate and conduct its operations without interruption in a diligent and efficient manner except while the Premises are not able to be occupied by reason of casualty. Merchant's business shall be adequately and competently staffed to operate in accordance with the Rules and Regulations contained in Exhibit C. Any cessation of business activity not consistent with the Rules and Regulations, regardless of the ongoing payment of Rent, shall be considered a material breach of this Concession Agreement.

- **4.3. Personal Attention by Merchant.** Although Merchant may hire employees, personal attention in the management and operation of the business on the Premises is mandatory. Each individual Merchant named as a party in the Concession Agreement, or if Merchant is an entity then the Majority Owner, shall devote substantial and on-going personal on-Premises attention to the operation of the business. Failure of the Merchant or Majority Owner to devote such personal attention shall constitute a material breach of this Concession Agreement.
- **4.4.** Rules And Regulations. Merchant and Merchant's employees and invitees shall comply with and observe faithfully the rules and regulations governing the Premises ("Rules and Regulations") and the Monument, as the Rules and Regulations are set forth in this Concession Agreement as Exhibit C, as such Rules and Regulations may be modified from time to time by City acting through its Commission. In the event of a conflict between the provisions of this Concession Agreement, as amended, and the Rules and Regulations, the provisions of this Concession Agreement shall govern.
- 4.5. Signs, Logos, and Marks. Merchant agrees that Merchant will not use any of the City's seals, names, logos, insignias or marks without the prior written consent of City. Use of the City seal requires explicit approval by the City Council. This section does not apply to seals, names, logos, insignias or marks that must be displayed pursuant to any duty imposed on Merchant. Merchant further agrees that Merchant will not act in any way or manner to impart official endorsement by the City of Merchant's merchandise or business. Merchant shall not, without the consent of the City, use the name "El Pueblo de Los Angeles" or "Olvera Street" or similar names (collectively as "El Pueblo Brand Names") for any purpose other than as an address of the business to be conducted by Merchant in the Premises, nor shall Merchant do or permit the doing of anything in connection with Merchant's business or advertising which, in the reasonable judgment of the City, may confuse or mislead the public as to any relationship between City and Merchant in the use of the Premises. Merchant further agrees that Merchant will not act in any way or manner to suggest or impart official endorsement by the City of Merchant's merchandise or business.
 - **4.5.1.** Shall Merchant desire to obtain trademark license to use any of the City's trademarks, including El Pueblo Brand Names, for any purpose, a separate trademark license with fair market royalties must be entered into with approval from appropriate City departments and/or City Council and approved by the City Attorney's Office. If requested by Merchant, City shall provide Merchant a royalty-free and paid-up trademark license for the use of the names "Olvera Street," "Placita Olvera,"or "Calle Olvera" in connection with Merchant's business operated in the Premises.
- Intellectual Property Rights. Merchants agree that any and all names, logos, trademarks and/or copyrights developed hereinafter which will in any way associate with, identify or implicate an affiliation with City or the El Pueblo Brand Names, shall be approved by City, shall belong to City upon creation or first use, and shall continue in City's exclusive ownership upon termination of this Concession Agreement. Further, any works developed pursuant to this Concession Agreement by Merchant, including all related copyrights and other proprietary rights therein, shall belong to City upon creation, and shall continue in City's exclusive ownership upon termination of this Concession Agreement. This shall include, but is not limited to, all construction drawings, designs, reports, specifications, notes and other work developed in the performance of this Concession Agreement. Further, Merchant shall deliver to the City, upon request, the disk or tape that contains the construction design files and shall specify the supplier of the software and hardware necessary to use the design files of any work that is performed with the assistance of Computer Aided Design and Drafting Technology. Merchant intends and hereby agrees to assign and transfer to City all right, title and interest in and to such intellectual property, including copyrights and other proprietary rights therein, unless otherwise agreed to in writing by City personnel with delegated authority or the City Council.
 - **4.6.1.** In the event that Merchant is required to convey to City tangible and intangible

deliverables, Merchant warrants that it has the full right, power and authority over and is the sole exclusive owner of all tangible and intangible property deliverable to City in connection with this Concession Agreement and that title to such materials conveyed to City shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances or security interests.

- **4.6.2.** Merchant agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights of third parties without first (i) obtaining City's prior written permission, and (ii) granting to or obtaining for City a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license, to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display and distribute, for any purpose and medium whatsoever, any such prior works.
- **4.6.3.** Merchant further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret or any other intellectual property rights of any person, entity or organization. Merchant agrees to promptly execute any documents reasonably requested by City in connection with securing City's registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Merchant further agrees to incorporate these provisions into all of its contracts with architects, engineers and other consultants or contractors.
- **4.6.4.** Merchant, at its sole expense, shall hold harmless protect, defend and indemnify City against any intellectual property infringement claim, demand, proceeding, action and/or dispute ("**Action**") brought by a third party in connection with any deliverable or Merchant's performance hereunder. Merchant shall pay all costs, expenses, losses and damages, judgments and claims including reasonable attorney's fees, expert witness fees and other costs. In Merchant's defense of the City, negotiation, compromise, and settlement of any such Action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.
- **4.6.5.** Rights and remedies available to the City hereinabove shall survive the expiration or other termination of this agreement. Further, the rights and remedies are cumulative of those provided for elsewhere in this Concession Agreement and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.
- **4.6.6.** Merchant agrees that before commencement of any subcontract work it will incorporate all provisions on property ownership, including Section 4.5 through subsection 4.6.5, to contractually bind or otherwise oblige its subconsultants, personnel performing work such that the City's titles, rights, and interests in deliverables and all intellectual property related rights are preserved and protected as intended herein.
- **4.7. Waiver by Artists.** The installation of any artwork permanently or semi-permanently, such as murals, must comply with any applicable provisions of City's sign laws. After obtaining written approval from City to install and at least 30 business days prior to installing any such artwork, Merchant shall secure written waivers from all artists such that the artists waive any and all of their "adroit moral" including the "right to integrity in the artwork" (i.e., right to preserve the artwork unaltered or destroyed) and other similar rights including those under the Visual Artists Rights Act, 17 U.S.C. $\ni 106A$ et seq. (including $\ni 106A(a)(3)(A)$, $\ni 106A(a)(3)(B)$ and $\ni 113$); and the California Art Preservation Act, California Civil Code $\ni 987$. Merchant shall file the written waivers with the City Attorney's Office for approval no later than 20 business days prior to the commencement of the installation of the artwork. Such installation shall not commence without written approval from the City Attorney's Office of the legal adequacy of the waivers.

- **4.8. Compliance With Laws.** In the use of the Premises, Merchant shall comply with all safety, health and policy regulations in all respects and at all times.
- **4.9. Uses For Other Premises.** Except as may be otherwise stated in Exhibit C of this Concession Agreement, City reserves the absolute right to rent or utilize other premises in the Monument as City shall determine to best promote the interests of the City of Los Angeles and the Monument, and no representations are made or intended as to the nature of the enterprise to be engaged in by any other merchant, or to preclude use of other premises for any other purpose by the City.
- **4.10. Vending Machines.** Mechanical, self operating or automatic vending machines, including but not limited to automated teller and cash dispensing machines, shall only be allowed in or operated in, on, or about the Premises consistent with the City's Rules and Regulations as contained in Exhibit C, and as may be amended from time to time.
- **4.11. Use Of Machine**ry. Merchant shall not use any machinery in the Premises which may cause vibration or tremor to the floors or walls, or which by its weight might injure the floors of the Premises or adjacent spaces.
- **4.12.** Hazardous Materials. Without limiting any of the obligations described above, Merchant shall not use or permit the Premises or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process hazardous materials without City's prior written consent, which may be denied at City's sole discretion, and even with City's written consent, only in compliance with all laws and regulations with respect to hazardous materials (The "Environmental Regulations") (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (U.S.C., Title 42 \(\text{ 9}\) 9601, et seq) (together with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (U.S.C., Title 42 > 6901. et seq) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-To-Know Act, as amended (together, with the regulations promulgated thereunder, "Title III") (42 U.S.C. ∋ 11011, et seq.) and any so-called "Superfund" or "Superlien" law), nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any agent, employee, independent contractor, licensee, the storage, transportation, disposal or use of hazardous materials or the release or threat of release of hazardous materials on, from or beneath the Premises or onto any other property. Upon the occurrence of any such release or threat of release of hazardous materials. Merchant shall promptly notify City in writing. Merchant shall pay as Additional Rent City's costs for all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all hazardous materials so released, on, from or beneath the Premises or other property, in strict compliance with all Environmental Regulations.
- 4.13. Window Displays And Signs. Upon substantial completion of merchant improvements, Merchant shall proceed to install Merchant's exterior signage (which shall be installed no later than the date that rent starts to accrue). All Merchant's signage shall be in compliance with all applicable laws, the Rules and Regulations, and any applicable sign criteria for the Monument as established by the City or its designee. Prior to installation of any sign, Merchant shall obtain written approval for the sign and its proposed location by the Monument General Manager. Merchant shall have the sole obligation to install and pay for Merchant's signage on the Premises. Merchant shall not install, display or maintain any off-site signs, digital signs or supergraphic signs. Except as approved in writing by City, no written or descriptive material of a permanent or nonpermanent nature, whether for advertising or any other purpose, shall be hung or affixed to the interior walls, ceilings, windows, and supports of the Premises or on the store front, windows or any other exterior surface or fixture of the Monument.

ARTICLE 5. TERM AND OCCUPANCY DATE

- **5.1.** Concession Agreement Term. The initial term of this Concession Agreement shall be for a period of twenty (20) years ("Term") and shall commence on the Execution Date ("Concession Agreement Commencement Date"), and shall terminate on the last of the month which is twenty (20) years after the month containing the Concession Agreement Commencement Date ("Concession Agreement Termination Date"), unless extended or terminated earlier pursuant to the provisions of this Concession Agreement.
- **5.2.** Concession Agreement Year Defined. The first "Concession Agreement Year" shall begin on the Concession Agreement Commencement Date and shall expire on the last day of the month, twelve (12) full calendar months next following said Concession Agreement Commencement Date. Subsequent Concession Agreement Years shall be each consecutive twelve (12) calendar month period thereafter.
- 5.3. Holdover by Merchant. In the event that Merchant remains in possession of the Premises after the expiration of the Term, or any extensions or renewals thereof, with the implied or express consent of City, Merchant shall become a merchant from month to month at the Rent (as that term is defined in Article 6) payable during the last month of the Term of this Concession Agreement, subject to any automatic Rent escalations applicable during the last two years of the expiring Term, or any extensions or renewals thereof, and such tenancy shall continue until terminated by City or Merchant giving the other at least thirty (30) days prior written notice of the intention to terminate the tenancy. In all other respects, the tenancy shall be governed by the provisions of this Concession Agreement.
- **5.4. Surrender of Premises.** The voluntary or other surrender of this Concession Agreement by Merchant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, operate as an assignment to it of any or all transfers, assignments or subtenancies. No act or thing done by City or any agent or employee of City during the Term shall be deemed to constitute an acceptance by City of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by City. The delivery of keys to the Premises to City or any agent or employee of City shall not constitute a surrender of the Premises or effect a termination of this Concession Agreement, whether or not the keys are thereafter retained by City, and notwithstanding such delivery, Merchant shall be entitled to the return of such keys at any reasonable time upon request until this Concession Agreement shall have been properly terminated.
- **5.5.** Condition of Surrendered Premises. Upon the expiration or termination of this Concession Agreement, Merchant shall peaceably surrender the Premises and all alterations and additions thereto, broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with all other provisions of this Concession Agreement and applicable law. Upon expiration or termination, Merchant shall, without expense to the City, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, freestanding cabinet work, and other articles of personal property owned by Merchant or installed or placed by Merchant at its expense in the Premises, and such similar articles of any other persons claiming under Merchant, as City may, in its sole discretion, require to be removed, and Merchant shall repair at its own expense all damage to the Premises and building(s) resulting from such removal.

ARTICLE 6. RENT

6.1. Rent. The word, "**Rent**" as used in the Concession Agreement, shall refer to the rent in the amounts set forth or provided for in this Concession Agreement to be paid to City at the place designated in Article 2.2 (page 3) or at such other place designated by City without, prior demand therefore, except for Additional Rent.

6.2. Rent Calculation. Rent shall be due as of November 1, 2010. A two-tiered rent structure shall be available to Merchant as provided in this Article. "Prior Rent" is the rental rate in effect immediately prior to the rent set by the Commission on April 1, 2010. Merchant's Prior Rent was \$ 5,631. The Merchant's rent established by the Commission on April 1, 2010, was \$ 10,006 ___ In no event shall Merchant pay rent less than Prior Rent. At the time of execution of this Concession Agreement, Merchant shall elect and select one of the three (3) rental rates set forth in the herein-below listed Tiers, namely, Tier One A, Tier One B or Tier Two. Tier One B rent is only available to the Merchant at the Commencement of the Concession Agreement and must be selected by the Merchant at the time of execution of the Concession Agreement. Tier One B rent also shall be available to an assignee who is an immediate family member as defined in Section 12.1.1.1, provided the assignment is made by the Merchant without an exchange of consideration (for example, Merchant receives no money or anything else of value from the assignee or anyone else) and provided that the assignee completes the form in Section 6.2.2.1. Tier Two hardship rent shall be available only to an assignee starting the sixth year after the assignment and only if the auditor determines assignee qualifies for Tier Two hardship rent. Merchant shall designate said election and selection by placing merchant's initials in the blank next to the listed Tier caption.

6.2.1. Tier One A (Market Rent: Broad Assignment Rights) [______]:

- **6.2.1.1**. If Merchant does not operate a Puesto, Merchant shall receive, for the first six months after Concession Agreement Commencement Date, a 25% discount from the April 1, 2010 Commission-approved rate. For the second six months, Merchant shall receive a 20% discount from the April 1, 2010 Commission-approved rate. In no event shall Merchant pay less than the Prior Rent.
- **6.2.1.2**. If Merchant operates a Puesto on Olvera Street, the Puesto rental calculations shall be based on the following:
 - **6.2.1.2(a)**. For the first six months after Concession Agreement Commencement Date, a Puesto having square footage of 75 square feet, or more, shall receive a discount of 25% from the April 1, 2010 Commission-approved rate. For the second six months after Concession Agreement Commencement Date, such a Puesto shall receive a 20% discount from the April 1, 2010 Commission-approved rate.
 - **6.2.1.2(b)**. For the first six months after Concession Agreement Commencement Date, a Puesto having square footage of less than 75 square feet shall receive a discount of 30% from the April 1, 2010 Commission-approved rate. For the second six months after Concession Agreement Commencement Date, such a Puesto shall receive a 25% discount from the April 1, 2010 Commission-approved rates.
- 6.2.1.3. On the thirty-seventh month after Concession Agreement Commencement Date, and again on the forty-ninth month after the Concession Agreement Commencement Date, the above rental rates will be adjusted by the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics, with a cap on such CPI increase of 5% yearly.

6.2.2. Tier One B (Phase-In; Limited Assignment Rights)

- **6.2.2.1.** In order to receive Tier One B rent, Merchant shall complete and sign a form provided by the Department and contained in Exhibit G. Merchant shall submit it to the Department at the same time Merchant signs the Concession Agreement. The form shall state that Merchant would not be profitable as set-out in Sections 6.2.3.2 and 6.2.3.3 if Merchant paid Tier One A rent. In no event shall Merchant pay less than the Prior Rent.
- **6.2.2.2**. If Merchant does not operate a Puesto on Olvera Street, then Merchant shall pay Tier One B rent as follows:
 - **6.2.2.2(a).** For the first twelve months after Concession Agreement Commencement Date: Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from the April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(c)**. For months 25 through 36 after Concession Agreement Commencement Date: 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.
- **6.2.2.3**. If Merchant operates a Puesto on Olvera Street having square footage of 75 square feet, or more, then Merchant shall pay Tier One B rent as follows:
 - **6.2.2.3(a)**. For the first twelve months after Concession Agreement Commencement Date: Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(c).** For months 25 through 36 after Concession Agreement Commencement Date: 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.
- **6.2.2.4**. If Merchant operates a Puesto on Olvera Street having square footage of less than 75 square feet, then Merchant shall pay Tier One B rent as follows:

- **6.2.2.4(a).** For the first twelve months after Concession Agreement Commencement Date, Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 30% discount from April 1, 2010 Commission-approved rental rates.
- **6.2.2.4(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 30% discount from April 1, 2010 Commission-approved rental rates.
- **6.2.2.4(c)**. For months 25 through 36 after Concession Agreement Commencement Date: 30% discount from April 1, 2010 Commission-approved rental rate.
- **6.2.2.4(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.

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6.2.3. Tier Two (Hardship Rent; Limited Assignment Rights) [

- **6.2.3.1**. Tier Two rent is hardship rent which at the time of the Concession Agreement Commencement Date shall be the greater of 50% of the rental rates approved by the Commission on April 1, 2010 and the Prior Rent. Any time after the Concession Agreement Commencement Date, hardship rent shall be 50% of the rent in effect at the time of the Tier Two hardship application or hardship annual reapplication.
- **6.2.3.2.** In order to receive Tier Two rent, Merchant shall submit to an audit by the City Controller using the protocol and criteria described below in 6.2.3.3. The audit shall be completed in 30 days. The audit must confirm that if Merchant paid Tier One A rent, Merchant's concession would no longer be profitable as set-out in Section 6.2.3.3. Merchant shall submit to an audit by the Controller for each year that Merchant seeks to pay Tier Two rent. During the time period in which the Controller is conducting the audit, Merchant shall continue to pay Rent in the amount due at the time of the hardship application. After the fifth-year anniversary of the Concession Agreement, any Tier Two rent shall conform to the hardship rent policy approved by the Commission in existence at that time.
- **6.2.3.3**. The auditor shall be the City Controller and shall conduct an audit tailored to a cash business to assess profitability as a percentage of revenues over expenses, and, if not a cash business, using other relevant criteria. The audit shall determine the ability of Merchant to pay Tier One A Rent and continue business as a going concern and on a commercially sustainable basis, with a reasonable profitability. Merchant shall be considered eligible for Tier Two rent if Merchant establishes that paying Tier One A rent would cause a lack of profitability (where revenues exceed expenses by less than 10%). Merchant shall cooperate with all inquiries the auditor deems reasonably necessary, including but not limited to the following (where applicable to particular merchants):
 - **6.2.3.3** (a). Review of federal business and/or personal tax returns if the auditor in its sole discretion determines that those documents would be relevant to the audit (for example, where Merchant does not maintain business bank records, sales receipts, certified daily ledgers, cash register tapes, etc.);

- **6.2.3.3 (b)**. Review of sales tax reported to the state;
- **6.2.3.3 (c)**. Review of any bank records into which deposits or withdrawals are made relating to the concession;
- **6.2.3.3 (d)**. Review of disbursements, including invoices or receipts for all expenses;
- **6.2.3.3 (e)**. Totaling receipts from receipt books and/or cash register tapes and tracing to deposit records and bank statements;
- **6.2.3.3 (f)**. Ensuring that receipts are issued for each sale by observing a merchant's sales to customers on random days not specified in advance;
- **6.2.3.3 (g)**. Comparing information in income tax returns to cash receipts and cash disbursement ledgers/records;
- **6.2.3.3 (h)**. Tracing disbursement records back to supporting documentation, such as cancelled checks and/or invoices;
- **6.2.3.3 (i).** Assessing the reasonableness of cash disbursements (to determine whether expenses are related to the Olvera Street business, such as payroll expenses and costs of good sold);
- **6.2.3.3 (j).** Review of certified daily ledgers maintained by any merchant of cash or other receipts and/or paid expenses.
- **6.2.3.4.** If Merchant seeks Tier Two rent status within the first year after Lease Commencement Date but Merchant did not maintain records and documents sufficient to comply with the requirements set forth in 6.2.3.3 above, then Merchant shall provide the auditor with all records and document that Merchant possesses. If the auditor finds that Merchant displays a likelihood of qualifying for the Tier Two requirements, then Merchant shall be provisionally granted Tier Two status for six months. Beginning no later than Concession Agreement Commencement Date, Merchant shall keep records and documents that allow Merchant to comply fully with the audit requirements.
- **6.2.3.5**. If at any time the auditor determines that Merchant does not meet the requirements to establish Tier Two status, then Merchant shall begin paying Tier One A or Tier One B rent and repay the City within 30 days the difference between the Tier One A or Tier One B rent and Tier Two rent plus interest calculated at 12% per annum or the maximum rate allowed by law, whichever is less, from the time Merchant first paid Tier Two rent.
- **6.2.3.6.** Subject to 6.2.3.4 above, if Merchant presents the auditor with insufficient documentation to reasonably satisfy the auditor, Merchant shall not be eligible for Tier Two rent. Merchant shall not be eligible for Tier Two rent if the auditor reasonably determines that Merchant materially underreported revenues to the City or to federal or state governments.
- **6.2.3.7**. To the extent allowed by law, all of the information furnished by Merchant to the auditor shall be deemed confidential and confidentiality shall be reasonably maintained by the auditor.

- 6.3. Rent. Merchant shall pay to City for each Concession Agreement Year during the Term of this Concession Agreement Rent payable in equal monthly installments. The Concession Agreement Commencement Date ("Rent Commencement Date") shall be November 1, 2010. Each monthly installment shall be paid in advance and shall be due on the first (1st) day of each month, without any set off or deduction. Payment shall be made to El Pueblo de Los Angeles Historical Monument Authority Department at the place given for notices in Article 2.2 (page 3) or to such other person or address as City may designate in writing from time to time. Payment must be in United States dollars, either in the form of a check (drawn on a bank located in the United States) or via electronically transmitted funds. City reserves the right to require payments in the form of cashier's check or postal money order. Merchant's obligation to pay rent pursuant to this Concession Agreement is based solely on Merchant's possession of the Premises.
 - **6.3.1.** Rent During Holdover. Rent for any month to month tenancy beyond the expiration of this Concession Agreement, or any extension or renewal thereof, shall be paid in the same manner as if the Term of this Concession Agreement had commenced with the first day of such holdover.
- **6.4.** Additional Rent. "Additional Rent" shall be all payments other than Rent due to City by Merchant as required and described in this Concession Agreement and shall be paid upon demand. City shall have the same rights and remedies hereunder with respect to the collection of said Additional Rent as it has with respect to the collection of Rent. Items which may generate Additional Rent include, without limitation: Security Deposit increase, if any (Section 10.1, page 16); public area maintenance and patrol services charges, and administrative fees levied for serving notice and pursuing enforcement of the use provisions and /or the Non-Encroachment Policy contained herein.

6.5. Late Payments.

- **6.5.1.** Interest On Unpaid Rent and Expenses. Any Rent, expenses or other sums owing to City pursuant to the provisions of this Concession Agreement, not paid when due shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate allowed by law, whichever is less, until paid, in addition to any Late Charges provided for in Section 6.5.2.
- **6.5.2.** Late Charges. For each such late payment that is not paid within ten (10) days after the date due, Merchant shall pay to City a service charge equal to ten percent (10%) of the overdue amount. Merchant acknowledges and agrees that such late payment by Merchant will cause City to incur costs and expenses not contemplated by this Concession Agreement, the exact amounts of which will be extremely difficult to ascertain, and that such service charge represents a fair estimate of the costs and expenses which City would incur by reason of Merchant's late payment. Merchant further agrees that such service charge shall neither constitute a waiver of Merchant's default with respect to such overdue amount nor prevent City from exercising any other right or remedy available to City
- **6.5.3.** Increase in Security Deposit. Following any three consecutive late payments of Rent, City may, in addition to any other remedies or rights it may have, upon notice to Merchant, require that Merchant increase the amount of any Security Deposit required herein pursuant to Article 10 by 100%, which additional Security Deposit shall be retained by City, and which may be applied by City, in the manner provided herein with respect to any Security Deposit required herein.
- **6.6. Back Rent.** Rent owed pursuant to this Concession Agreement shall be due as of November 1, 2010. If between November 1, 2010, and the Execution Date of this Concession Agreement, Merchant paid Rent less than the amount set by this Concession

Agreement, the difference ("Back Rent") shall be paid by Merchant to City in equal installments over a period of twenty-four (24) months commencing on the Execution Date of this Concession Agreement. However, if Merchant's first twelve (12) months of total payments (back rent, CAM, security deposit and rent) to City pursuant to this Concession Agreement will exceed 150 percent of the total amount paid by Merchant in the twelve (12) months immediately prior to the Execution Date of this Concession Agreement, then Merchant may pay the Back Rent in equal installments over a period of sixty (60) months commencing on the Execution Date of the Concession Agreement.

ARTICLE 7. ANNUAL BASE RENT ADJUSTMENTS AND FAIR MARKET RENT ADJUSTMENT

- Computation of Base Rent Increases. For the first 60 months of this Concession Agreement, Rent shall be automatically adjusted pursuant to the provisions in Article 6. Commencing with the sixth (6th) Concession Agreement Year (as defined in Section 5.2, page 8), and continuing on the commencement of each Concession Agreement Year thereafter, with the exception of the Fair Market Rent Adjustment every fifth year, the Rent payable under Section 6 shall be automatically adjusted, effective on the commencement of each Concession Agreement Year (The "Adjustment Date"), proportionately by the increase, if any, in the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is for the month which is four (4) months prior to Concession Agreement Commencement Date ("Beginning Index"). The Index for the month which is four (4) months prior to each Adjustment Date ("Extension Index") is to be used in determining the amount of the adjustment. In other words, if the Extension Index has increased over the Beginning Index, the Base Rent for the following Concession Agreement Year shall be set by multiplying the Rent for the first (1st) Concession Agreement Year (i.e., \$ 75.066 per year) by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. In no event, however, shall the Rent for a Concession Agreement Year ever be less than the Rent in effect immediately preceding such Concession Agreement Year.
- **7.2. Market Rent Adjustment**. Commencing with the sixth (6th) Concession Agreement Year and every fifth (5th) year thereafter during the Term of the Concession Agreement and any extension of the Concession Agreement, the Rent shall be adjusted to fair market rent rates, according to the following procedures. The first market rent rate adjustment shall be effective and the new Rent paid by Merchant beginning on month 61. In the interim years, the Concession Agreements will be escalated annually based on the Index.

Every five (5) years, the Rent shall be reset to fair market rent based on appraisal reports. The market reset process shall begin six months before each five-year anniversary of the Concession Agreement and shall occur as follows: (1) City and Merchant, or their designated representatives, shall meet for a sixty (60) day period to negotiate and attempt to agree on a rent increase; (2) if no agreement is achieved, then the City shall have forty-five (45) days to commission and produce a certified MAI appraisal of "market rent" and Merchant shall have fortyfive (45) days to commission and produce a certified MAI appraisal of "market rent." Each appraisal must comply with the Uniform Standards of Professional Appraisal Practices and the Appraisal Institute. The term "market rent" shall be as defined in the Appraisal Institute Dictionary of Real Estate Appraisal. If a party fails timely to commission and produce a certified MAI appraisal of "market rent," then the new rent shall be as established in the certified MAI appraisal of "market rent" that was timely commissioned and produced by the other party. The City and Merchant appraisers (or, alternatively, a judge of the Los Angeles County Superior Court on Ex Parte Application by either party) shall select a third, neutral MAI-certified appraiser qualified to render an appraisal of the downtown retail market. The designated neutral appraiser shall choose market rates for Merchant from those specified in the appraisal that is best supported and reasonable. The designated neutral appraiser shall have 30 days to complete his or her analysis and render a conclusion. If that timing is deemed not possible by the neutral appraiser, both sides shall jointly stipulate to an agreement for time of completion. The conclusion of the third

appraiser shall be binding and shall become the new Rent. Merchant shall not seek to challenge the conclusion of the third appraiser in any forum including, but not limited to, Commission, City Council or the courts.

7.3. Changes in the Index. If the Index changes so that the base year of the Index differs from that used as of the Beginning Index, the Index shall be converted in accordance with the conversion factors published by the United States Department of Labor, Bureau of Labor Statistics. Should said Index be discontinued, or be published with such infrequency as to render the formulae in this Article to be unworkable, or be altered in some other manner, then City and Merchant shall mutually adopt a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. The substitute index must obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

ARTICLE 8. EXTENSION PERIOD

- **8.1.** Extension Period; Request for Extension. Merchant shall have one (1) 20-year option to extend Term of the Concession Agreement. If Merchant is not in default of this Concession Agreement as determined, in part, by Merchant Evaluations as provided for in Section 22.2, Merchant may submit to City a written notice ("Extension Notice") to extend this Concession Agreement ("Extension Option") for twenty (20) years ("Extension Period"), which Extension Request shall be received by City no later than one hundred and eighty (180) days prior to the then-scheduled Concession Agreement Termination Date. The Rent for the Extension Period shall be as provided in this Concession Agreement.
- **8.2. Extension Option Term.** The Extension Period shall be upon the same provisions, covenants, and conditions as those contained in this Concession Agreement

ARTICLE 9. MERCHANT'S RECORDS

- **9.1. Preparation and Retention of Records.** Merchant shall prepare and keep adequate financial records accurately reflecting daily receipts from all sales and other transactions on or from the Premises by Merchant and any other entities or persons conducting any business upon or from the Premises, as well as purchase of merchandise and other concession expenses.
- **9.2.** Cash Register Receipts. Merchant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total which shall be sealed in a manner approved by City, and having such other features as shall be required and approved by City.
- **9.3.** Original Business Records. Merchant shall keep on the Premises (or at some other place agreeable to City within the County of Los Angeles) for at least three (3) years following the end of any Concession Agreement Year the financial records required with respect to said concession, including all pertinent original sales records. If such pertinent original business records are kept at a place other than the Premises, Merchant shall bring such pertinent original sales records to the Premises or such other place reasonably designated by City upon request of City.
- **9.4.** City's Right of Examination. City and City's authorized representative shall have the right to examine Merchant's financial records required by this Article during regular business hours and upon five (5) days written notice. City may examine Merchant's financial records required by the Article as City deems necessary:
 - (a) In connection with Merchant's application for Tier Two (Hardship) Rent, pursuant to Section 6.2.3; or
- (b) At any time after Merchant initiates a damage claim against City. City encourages Merchant to submit to City Merchant's financial records for the purpose of

determining fair market rental value during the market rent adjustment process required in Article 7.2 of this Concession Agreement.

ARTICLE 10. SECURITY DEPOSIT

- 10.1. Security Deposit. Merchant shall maintain on deposit with City throughout the Term of this Concession Agreement a deposit in cash as security for the performance of Merchant's obligations under this Concession Agreement ("Security Deposit"). amount of the Security Deposit shall be equal to two (2) months Rent payable in equal installments over a period of twenty-four (24) months commencing on the Execution Date of the Concession Agreement. However, if Merchant's first twelve (12) months of total payments (back rent, CAM, security deposit and rent) to City pursuant to this Concession Agreement will exceed 150 percent of the total amount paid by Merchant in the twelve (12) months immediately prior to the Execution Date of this Concession Agreement, then Merchant may pay the amount of the Security Deposit in equal installments over a period of sixty (60) months commencing on the Execution Date of the Concession Agreement. City shall hold the Security Deposit, and City shall have the right at any time to apply part or all of the Security Deposit to cure Merchant's default in payment of Rent, to repair damages to the Premises resulting from Merchant's occupancy, to clean the Premises upon termination of this Concession Agreement, and any expense, loss, or damage that City may suffer because of Merchant's default under this Concession Agreement. Merchant shall be obligated to maintain the Security Deposit at its full amount by payment of Additional Rent, and City, upon sixty (60) days prior written notice, may require Merchant to deposit an additional amount where events (e.g., an increase in the Rent amount) reasonably require an increase in the amount of the Security Deposit (see also Section 6.5.3, page 13, for increased Security Deposit in the event of late Rent payments). Upon termination of this Concession Agreement, City may utilize all or part of the Security Deposit to restore the Premises to its original condition, less normal wear and tear. Deductions may include the removal of personal property. Deductions also may include sums reasonably necessary to compensate City for any loss or damage, foreseeable or not, caused by an act or omission of Merchant and Merchant's invitees. Neither the Security Deposit nor its application by City shall be a bar or defense to any action in unlawful detainer or to any action which City may at any time commence for a breach of any of the covenants or conditions of this Concession Agreement. City's obligation with respect to the Security Deposit are those of a debtor and not a trustee. City can maintain the Security Deposit separate and apart from City's general funds or can commingle the security deposit with City's general fund or other funds. City shall not pay Merchant interest on the Security Deposit.
- 10.2. Return of Security Deposit. City shall retain any portion of the Security Deposit which may properly be utilized by City for the purposes described in this Article 10 and shall return the balance of the Security Deposit to Merchant: upon termination of this Concession Agreement by reason of damage or destruction of the Premises, default on the part of City, or taking of the Premises by right of eminent domain; or upon the any other termination of this Concession Agreement, including any month-to-month holdover, within two (2) weeks after the date City receives possession of the Premises, unless the Security Deposit will reasonably be used to repair damages to the Premises caused by Merchant or to clean the Premises, in which case the return shall be within thirty (30) days after the date City receives possession of the Premises.

ARTICLE 11. TAXES, LICENSES AND PERMITS

11.1. Taxes. Merchant shall pay any tax which may be assessed against Merchant's interest in the Premises and all taxes levied upon trade fixtures and personal property located in the Premises. In no event shall City be obligated or required to pay these or any other taxes levied or assessed by reason of Merchant's occupancy, possession and control of the Premises.

- 11.2. Licenses and Permits. Merchant shall obtain any licenses and permits required for the use and occupancy of the Premises and shall pay any and all taxes, fees, or charges regularly levied, charged or assessed by the City of Los Angeles or other public agencies upon businesses of the type conducted in the Premises. Such taxes, fees, or charges are the obligation of the Merchant.
- 11.3. Acknowledgment of Taxable Interest. By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest will be subject to property taxation. Merchant, as the party in whom the possessory interest is vested, shall be responsible for the payment of all property taxes, if any, levied upon such interest. Merchant acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided. Merchant acknowledges that by this Article it has been informed of the necessity of filing a claim for exemption to obtain any available exemptions from said tax, and has also been advised that exemption from taxes may not be granted, and that City has no control as to whether or not such exemption will be granted.

ARTICLE 12. TRANSFER OF INTEREST

- 12.1. Prohibitions and Limits on Transfer of Concession Agreement Interests. Merchant shall not involuntarily transfer by operation of law, or voluntarily transfer (either by assignment, use agreement, license or concession) the Concession Agreement or Premises, in whole or in part, nor sublet the use of, or license the use of all or any part of the Premises, except as provided herein.
 - **12.1.1. Transfers of Interest Conditions.** City will consider written requests by Merchant to transfer the Premises or rights and duties of the Concession Agreement consistent with this Article and, after such consideration, may consent to such transfer at its reasonable discretion, as described in Section 12.1.3 below. Notwithstanding this consideration or consent, the proposed transfer will not take effect until all City contracting approvals and formalities are observed, and an amended Concession Agreement is executed by all parties.
 - **12.1.1.1.** If Merchant pays Tier One A rent, Tier One B rent or Tier Two rent, then Merchant may make an assignment to an immediate family member (spouse, registered domestic partner, children, adopted children and blood relative in the second degree) provided the Concession Agreement is assigned to, or placed in trust with, a single designee for all concession purposes.
 - 12.1.1.2. If Merchant pays Tier One A rent, Merchant may also make a one-time assignment to another existing Olvera Street merchant (merchant to whom assignment is proposed must have been a concessionaire since at least 1999). However, if Merchant requesting the assignment at any time paid Tier One B rent or Tier Two rent, then said Merchant may only make the one-time assignment described in the preceding sentence if said Merchant paid Tier One A rent for at least 12 consecutive months prior to the requested assignment.
 - **12.1.2. Transfers to Qualified Entities.** Any assignment permitted in this Article may be made to a legally formed and legally qualified entity (corporation, limited liability company or partnership) provided that such an assignee includes an assignee authorized by this Article who is the Majority Owner. The Majority Owner must be the day-to-day operator of the concession.
 - 12.1.3. City's Consent. City shall not unreasonably withhold its consent to a proposed transfer of the Concession Agreement or Premises consistent with this Article. The parties hereby agree that City may take into consideration the following in granting or withholding its consent to a requested assignment. City's failure to consent to a transfer

otherwise authorized by this Article shall be deemed reasonable as a matter of law where one or more of the following apply:

- (a) Only applicable to an assignment sought to another merchant under Section 12.1.1.2: The merchant to whom the assignment would be made (the assignee) has made three consecutive late or partial rent payments with respect to other City property including, but not limited to, on Olvera Street, without the City's prior written permission;
- (b) The merchant to whom assignment is proposed does not possess sufficient financial strength to assure compliance with the Concession Agreement terms:
- (c) The merchant to whom assignment is proposed has been convicted, pled guilty, or pled nolo contendere of a crime of moral turpitude, or is engaged in a business which is incompatible with the Monument's business plan or historical significance:
- (d) The merchant to whom assignment is proposed intends to use the Premises in manner different from Merchant's use of the Premises allowed under the Concession Agreement;
- (e) The Merchant owes the City any monies including, but not limited to, back Rent; or
- (f) The transfer of the Concession Agreement or Premises is requested within one (1) year of expiration of the Concession Agreement.
- 12.1.4. Improper Transfer. If Merchant agrees, orally or in writing, to transfer, assign, sublet or license any portion of the Premises in any manner inconsistent with this Concession Agreement, then any such transfer, assignment, sublease or license shall be void and be of no legal effect, and the City shall not recognize or grant any rights to any other party relating to said improper transfer, assignment, sublease or license. In the event of such an improper transfer. Merchant shall forfeit any remaining option to extend the term of the Concession Agreement as provided herein-above in Section 1.3, page 1. The City may also seek all damages and remedies available under the Concession Agreement and available in law and equity for any such improper transfer. Merchant also shall defend. indemnify and hold harmless City and any and all of City's boards, commissions, officers, agents, employees, assigns, and successors in interest and, at the option of City, defend by counsel satisfactory to City, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys' fees and cost of litigation, arising out of or relating to Merchant agreeing to transfer, assign, sublet or license any portion of the Premises. Rights and remedies available to City under this Section are cumulative of those provided for elsewhere in the Concession Agreement.
- 12.1.5. Re-set to Market Rate. If the City approves a transfer to a merchant pursuant to Section 12.1.1.2, upon the transfer, the Rent due hereunder from transferee resets to a market rate. A transfer to a merchant pursuant to Section 12.1.1.2 during the first year after Concession Agreement Commencement Date will result in a Rent due from the transferee at the level set by the Commission on April 1, 2010. Commencing with the second year after Concession Agreement Commencement Date, and each year thereafter through the fifth year, transferee's Rent will be the April 1, 2010 Commission-approved rent, adjusted by the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics, with a cap on such CPI increase of 5% yearly. Thereafter, for all transfers approved by the City after the first 60 months of this Concession Agreement, transferee's Rent will be computed pursuant to Article 7.

ARTICLE 13. DEATH OF MERCHANT AND FAILURE TO OPERATE

13.1. Death of Merchant or Co-Merchant/Failure to Operate. If Merchant is a single individual, upon the death of Merchant Merchant's interest in the Concession Agreement shall

immediately terminate and the Premises will be voluntarily vacated thirty (30) days after the death of Merchant. Any representative of Merchant or Merchant's estate in possession of the Premises during the thirty-day period following Merchant or co-Merchant's death shall not be considered to be an assignee or submerchant approved by City. Any payment of Rent during and for the thirty-day period shall be considered to be made on behalf of decedent Merchant, or his or her estate, and shall not create a new tenancy. The Concession Agreement will also terminate if Merchant fails to operate its business of thirty (30) days on account of Merchant's disability and no transfer previously approved by City in writing pursuant to this Concession Agreement remains to operate the business after the expiration of the thirty-day period.

If there is no authorized representative of Merchant and Merchant dies or becomes so disabled that Merchant can no longer operate its business in the Premises, Merchant hereby authorizes City to enter the Premises, to pack Merchant's belongings and personal property and trade fixtures, to remove said property from the Premises and to store it. If Merchant or Merchant's authorized representative subsequently fails to claim Merchant's belongings and personal property, City shall, at Merchant's expense, dispose of such property. City shall not be liable for any loss of or damage to, Merchant's property not caused by City's gross negligence or willful and bad faith conduct, nor shall City be liable in any way to Merchant for entering the Premises, taking possession and control of Merchant's property, and removing it.

ARTICLE 14. BANKRUPTCY - INSOLVENCY

14.1. Bankruptcy. In the event that all or substantially all of Merchant's assets are placed in the hands of a receiver or trustee and such receivership or trusteeship continues for a period of thirty (30) days; or Merchant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt; or any proceedings under the Bankruptcy Act is instituted by Merchant or filed against Merchant as it now exists or under any amendment thereof which may hereafter be enacted, and this Concession Agreement is not terminated, the trustee or any vendee of trustee or vendor shall take subject to all of the provisions and conditions of this Concession Agreement, including, but not limited to, the use requirements specified in Exhibit C, and further that any unpaid Rents or sums owed to the City are fully paid.

ARTICLE 15. IMPROVEMENTS

Modifications, Additions, Title to Improvement. In the event that Merchant desires to make modifications, improvements or additions to the Premises or any part of the Premises for the following items:, structural design, accessibility barrier removal work, landscape design, interior or exterior fixtures, or furnishings that vary from an old world Mexican theme. (collectively "Alteration(s)"), the approval in writing of City shall be obtained prior to the commencement of any Alterations, which approval shall not be unreasonable withheld. All modifications and additions shall be in accordance with this Article. Once any Alteration has been approved by City and the work has begun, Merchant shall, with reasonable diligence, prosecute to completion all approved Alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to City as required herein, and shall comply with all applicable governmental permits, laws, ordinances and regulations. It shall be the responsibility of Merchant, at its own cost and expense, to obtain all licenses, permits and other approvals necessary for the construction of approved Alterations. Title to all Alterations and Improvements existing or hereafter erected on the Premises, regardless of who constructs such improvements, shall immediately become City's property and, at the end of the Term, shall remain on the Premises without compensation to Merchant. Merchant agrees never to assail, contest or resist title to the Alterations and improvements. The foregoing notwithstanding, City may elect, by notice to Merchant, that Merchant must remove any Alterations that are peculiar to Merchant's use of the Premises and are not normally required or used by City and/or future occupants of the Premises. In this event, Merchant shall bear the cost of restoring the Premises to its condition prior to the installment of the Alterations.

- **15.1.1.** Merchant acknowledges that the Premises are part of an historic building and Monument. Merchant may not remove or modify the historic or architectural fabric or features of the Premises without prior written approval from City, which City may refuse to give at City's sole discretion.
- **15.1.2.** No awning, shade, sign, advertisement, or notice shall be inscribed, painted or affixed on or to any part of the outside or inside of the Premises except it be of such color, size and style and in such place upon or in the Premises as may be designated by City.
- **15.1.3.** Lettering on doors and other exterior signs to the Premises shall be subject to City's prior approval, which approval is hereby granted on current lettering on doors unless such lettering violates City law.
- **15.1.4.** Electric wiring of every kind, boring or cutting for wires, and the location of telephone and telegraph instruments shall be designated by City.
- Notwithstanding any other provision of this Concession 15.1.5. Agreement, in the event any Merchant conducts restaurant operations in the Premises, at least once every three (3) months or more often as needed, Merchant shall hire a licensed, insured plumbing contractor to remove debris, clear, unclog or "jet," the sewer lines that carry debris from the Premises, unless a sewer line is no longer in service. Merchant shall select the licensed, insured plumbing contractor from a list pre-approved by City. Merchant shall bear the sole responsibility for payment for the plumbing maintenance. Merchant shall provide to City, by no later than the tenth (10th) day after completion of the plumbing maintenance, documentation of the work performed and the Merchant's payment for the work. In the event Merchant fails to perform the quarterly plumbing maintenance and provide written proof of the work, City may contract directly with the plumbing contractor to perform the maintenance work. Merchant must permit the plumbing contractor to access the Premises as specified in Section of this Concession Agreement. All cost for the plumbing work incurred by the City on the Merchant=s behalf is hereby deemed Additional Rent, and Merchant shall promptly pay the cost of such work upon receipt of an invoice therefor.
- **15.1.6.** General Construction Guidelines. Except as provided by law or regulations, the California Building Code (Title 24, California Code of Regulations) shall apply. Merchant shall use the Construction Specifications Institute (CSI) Master Guide Specifications and Historic Building Codes in the planning, design, construction and completion of all Improvements. Merchant shall place great importance on quality assurance by complying with all governing codes and regulations, providing products of acceptable manufacturer's instructions.

ARTICLE 16. CONSTRUCTION AND COMPLETION OF CAPITAL AND MERCHANT IMPROVEMENTS

16.1. Installation of Fixtures and Equipment. All Merchant Improvements to the Premises shall be the responsibility of Merchant, at Merchant's sole cost and expense. Merchant shall install at the Premises all trade fixtures, equipment, and furnishings necessary or proper for the operation of Merchant's business. All such items shall be of first quality, although refurbished items in good working order that keep with an old world Mexican theme are acceptable. All items shall be maintained by Merchant in good condition and repair throughout the Term of this Concession Agreement. Restrooms, plumbing, wiring attached to the existing structure, lighting fixtures, and floor-to-ceiling partitions shall be construed as alterations to the Premises.

- 16.2. Monument Systems Defined. As used in this Concession Agreement, the defined term "Capital Improvements" shall mean any machinery, transformers, duct work, conduit, pipe, bus duct, cable, wires, and other equipment, facilities, and systems, to the extent within The Monument or the infrastructure owned and operated by the City of Los Angeles, designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer, or other systems or equipment which service The Monument in whole or in part; provided, however, that such equipment, facilities, and systems which serve solely the Premises or Merchant with respect to communications, alarm, security, and computer systems shall not be considered part of the Monument Systems to the extent that such equipment, facilities, and systems may be accessed and altered without interference with any Monument Systems.
- 16.3. Notices of Non-Responsibility. Before any improvements, alterations, or construction work of any kind are performed by Merchant, subsequent to completion of Merchant's initial work as specified in this Concession Agreement and the attachments hereto, Merchant shall first give to City ten (10) days notice in order that City may post and record a non-responsibility notice. City shall have the right to post and keep posted on the Premises notices such as those provided for by Section 3094 of the Civil Code of California, or which City may deem to be proper for the protection of City's interest in the Premises. Upon completion of any construction by Merchant, Merchant or Merchant's contractor shall file for record in the Office of the County Recorder in and for the County of Los Angeles a Notice of Completion as permitted by law and provide a copy of said notice to City.

ARTICLE 17. EASEMENTS FOR MAINS, CONDUITS, AND PIPES

17.1. Easements. City reserves to itself and Merchant hereby grants to City such licenses of easements in or over or under the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits or pipes or for construction of other facilities to serve the Monument or any part thereof, including the premises of any occupant. City shall pay for any alteration required on the Premises as a result of any such exercise, occupancy under or enjoyment of licenses or easements. Further, no exercise, occupancy under, or enjoyment of licenses or easements by City shall result in unreasonable interference with Merchant's use, occupancy or enjoyment of the Premises as contemplated by this Concession Agreement.

ARTICLE 18. MAINTENANCE AND HOUSEKEEPING

- 18.1. City's Code Compliance Obligations. If at any time during the Term of this Concession Agreement, any regulatory or municipal agency determines that repair or construction of roofs, foundations, structural components of buildings, the exterior surface of outside walls, main plumbing lines, main natural gas lines, and electrical lines up to the main circuit box is necessary to bring the Premises into compliance with applicable building codes, City shall correct such non-compliance at its sole cost and expense. Temporary relocation of Merchant or rent abatement during repairs or construction shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the Commission.
- 18.2. Merchant's Obligations. Merchant shall maintain all facilities and personal property and equipment on the Premises in good condition and repair at Merchant's sole cost and expense at all times during the term of this Concession Agreement. Such maintenance shall conform to City standards in accordance with Exhibit "F", Facility Maintenance Program. The term maintenance, for the purposes of this Concession Agreement, is defined as all repairs to real property improvements and preservation work necessary to maintain Premises facilities including but not limited to the infrastructure of facilities, personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful

- life. Should Merchant fail, neglect, or refuse to undertake and complete any required maintenance, City shall have the right pursuant to Section 18.2.1 to perform such maintenance or repairs for Merchant. In this event, Merchant shall promptly reimburse City for the cost thereof, provided however, except in case of an emergency, that City shall first give Merchant ten (10) days written notice of its intention to perform such maintenance or repairs. City shall not be obligated to make any repairs to or maintain any improvements on the Premises. Merchant hereby expressly waives the right to make repairs at the expense of City and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto if any there be. City has made no representations respecting the condition of the Premises, except as specifically set for in this Concession Agreement. Prior to initiating any maintenance, Merchant shall submit a maintenance plan to City describing the maintenance work it intends to udertake.
 - **18.2.1.** If Merchant refuses or neglects to repair, replace or maintain the Premises, or any part thereof, in a safe manner and a manner reasonably satisfactory to City, City shall have the right, upon giving Merchant ten (10) days written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Merchant. In such event, Merchant shall pay the cost of such work as Additional Rent promptly upon receipt of an invoice thereof.
 - **18.2.2.** On ten (10) days written notice (except in emergency wherein no notice is required) City may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, additions to the Premises or to the building of which the Premises are a part, or to any equipment located in the building as City shall desire or deem necessary or as City may be required by any governmental or quasi-governmental authority or court order or decree. In the case of emergency requiring immediate attention, City's right to enter may be exercised at City's reasonable discretion.
- 18.3. Compliance with Laws. Merchant shall continuously and without exception repair and maintain the Premises, including Merchant Improvements, Alterations, fixtures, and furnishings, in an order and condition in compliance with all Laws and Orders. As used in this Concession Agreement, the defined term "Laws and Orders" includes all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued, including, without limitation, government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords, or merchants. Merchant, at Merchant's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to or are triggered by (a) Merchant's particular use of the Premises, (b) the Merchant Improvements located in the Premises, or (c) any Alterations located in the Premises. City, at City's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to the any of the structural or mechanical components of the Monument for which City is responsible under this Concession Agreement. If, however, a portion or all of such compliance work on such structural or mechanical components of the Monument is triggered by the Merchant Improvements or Alterations requested by Merchant under Article 16, Merchant shall bear all expense of such work on such portion of the structural or mechanical components of the Monument.
- **18.4.** Public Area Maintenance; Patrol Services. For the first Concession Agreement Year of the Term, and the first fractional calendar month, if any, Merchant shall pay to City Additional Rent at the rate of \$0.36/square foot per month for public area maintenance and patrol services ("Common Area Maintenance" or "CAM"). Neither City nor any of its employees shall be liable to Merchant for damage allegedly or proximately resulting from insufficient patrol services, or for failure of the patrol to prevent an act by any person. For each Concession Agreement Year thereafter, the amount paid as Additional Rent for maintenance and patrol services shall be

increased or decreased from the rate of the previous year to reflect any reasonable change in the costs incurred by the El Pueblo Department.

ARTICLE 19. UTILITIES

- 19.1. Water, Sewage and Trash. Merchant shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises, including but not limited to delivery of water to the Premises, and sewage and trash disposal. Merchant shall install separate water meter, grease interceptors and other infrastructure as needed to effect the intent of this Section. Merchant shall pay for water directly to the local public utility. When installing facilities, no trees shall be trimmed or cut without permission of City. Removal and disposal of all rubbish, refuse, and garbage resulting from Premises' operations shall be the Merchant's responsibility and shall be disposed of outside the Monument and in accordance with the City's Rules and Regulations and applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of City.
- 19.2. Electricity, Gas and Telecommunications. Merchant shall be responsible for arranging for the provision of electricity and gas to the Premises. Electricity and gas shall be separately metered and Merchant shall pay for any usage at the rates charged by local public utilities. Merchant shall be responsible for arranging for the provision of any telecommunications services to the Premises, including, without limitation, telephone and cable service. Charges for all telecommunications supplied to the Premises shall be paid by Merchant.
- **19.3. Air Systems.** Merchant shall operate, repair and maintain a heating, ventilating, cooling, air handling and control system ("**HVAC**") serving the Premises.
- **19.4.** Customer Parking. Public parking and Merchant parking shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the Commission.
- 19.5. Casualty, Damage or Destruction. If the Premises or the Monument suffer any substantial casualty or are destroyed or damaged by fire, earthquake, or from any cause whatsoever, Merchant and City shall each have the option to terminate this Concession Agreement upon giving fifteen (15) calendar days prior written notice to the other party of the exercise of this termination right.
- 19.6. Waiver. The provisions contained in this Concession Agreement shall supersede any contrary laws now or hereafter in effect relating to damage or destruction, and City and Merchant hereby waive the provisions of California Civil Code sections 1932(2) [termination where greater part of thing hired perishes] and 1933(4) [automatic termination upon destruction of thing hired].
- 19.7. Termination. If either party terminates this Concession Agreement as permitted by this Article, then this Concession Agreement shall end effective the date specified in the termination notice. The rent and other charges shall be payable up to the effective date of termination and shall account for any abatement. City shall promptly refund to Merchant any prepaid, unaccrued rent, accounting for any abatement, less any sum then owing by Merchant to City.

ARTICLE 20. INSURANCE AND INDEMNIFICATION

20.1. Insurance. Merchant, at Merchant's own cost and expense, shall, prior to any possession or other use of the Premises, secure and maintain during the entire Term and any extension or holdover of this Concession Agreement, insurance coverage for the Premises not less than the amounts and types listed on Form Gen 146 attached as Exhibit H. All insurance

must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to City as approved in writing by the City Administrative Officer. Evidence of required insurance coverages shall be provided to City prior to the Execution Date of the Concession Agreement, in accordance with the Instructions and Information on Complying with City Insurance Requirements (Rev. 10/09) attached as Exhibit H-1.

- **20.1.1. General Liability Insurance.** Merchant shall provide and maintain commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000) Combined Single Limit per occurrence with a general aggregate of not less than Two Million Dollars (\$2,000,000). City, its boards, officers, agents and employees, shall be included as additional insureds in all General Liability insurance required herein. Merchant shall also keep in force fire legal liability insurance coverage in the amount of One Hundred Thousand Dollars (\$100,000). At any time prior to the City's approval of any Extension Option under Article 8, the City may increase the amount of General Liability Insurance and other insurance required by this Section to a commercially reasonable amount that provides the City with full protection for any insurable loss.
- **20.1.2. Improvements or Alterations Insurance.** Before any improvements, alterations, or construction work of any kind are performed by Merchant, Merchant shall obtain and maintain, at Merchant's expense, liability and worker's compensation insurance (if applicable) adequate to fully protect City as well as Merchant from and against any and all liability for death of or injury to any person or for loss or damage to property caused in or about or by reason of Merchant's construction. In addition, Merchant shall carry "Builder's All Risk" insurance in an amount equal to the replacement cost of such Alterations during the course of construction.
- **20.1.3. Workers' Compensation and Employer's Liability.** Merchant shall provide and maintain Workers' Compensation coverage in the amount required by statute and Employer's Liability coverage in an amount not less than One Million Dollars (\$1,000,000) each accident or disease.
- **20.1.4. Merchant's Property.** City will not insure Merchant's equipment stored goods, other personal property, fixtures, or merchant improvements, nor such personal property owned by Merchant's invitees. City shall not be required to repair any damage to any personal property or trade fixtures installed in the Premises by Merchant caused by fire or other casualty, or to replace any such personal property or trade fixtures. Merchant may, at Merchant=s sole option and expense, obtain physical damage insurance covering Merchant's equipment, stored goods, other personal property, fixtures or merchant improvements or obtain business interruption insurance.
- **20.1.5. Notice Of Reduction in Insurance.** All insurance policies required under this Concession Agreement shall expressly provide that such insurance shall not be canceled or materially reduced in coverage or limits except after thirty (30) days written notice (ten (10) days for non-payment of premium) to City Administrative Officer, Risk Management, City Hall East, Room 1240, 200 North Main Street, Los Angeles, California 90012.
- **20.1.6. Default.** If insurance is canceled, lapsed, or reduced below minimums required in this Article, City may consider this Concession Agreement to be in default and may terminate it. Termination shall occur at the expiration of a ten (10) day notice given in accordance with the provisions of the Code of Civil Procedure Section 1162. At the termination of ten (10) days or sooner, the Merchant shall vacate the Premises and the Merchant shall have no right to possess or control the Premises or the operations conducted therein. If the Merchant does not vacate, City may utilize any and all court proceedings to obtain a right to possession.

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- **20.1.7.** Adjustment of Insurance Levels. City may, from time to time during the Term or any extension or holdover of this Concession Agreement, applying generally accepted risk management principles, change the amounts and types of insurance required hereunder upon giving Merchant ninety (90) days prior written notice.
- **20.2. Waiver of Subrogation.** Each party hereto agrees to waive its rights of recovery against the other for any physical damage it may sustain to the extent that such damage is covered by valid and collectible property insurance. Each party will notify its respective insurers of such agreement. Further, each party agrees to waive in advance its insurer's rights of subrogation to the extent that its insurance policies so permit.
- 20.3. Indemnification. Except for the active negligence or willful misconduct of City, Merchant undertakes and agrees to defend, indemnify, and hold harmless City and any and all of City's boards, commissions, officers, agents, employees, assigns, and successors in interest and at the option of the City, defend by counsel satisfactory to the City, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys' fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Merchant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the acts, errors, omissions, or willful misconduct on the part of Merchant, contractors, subcontractors or invitees of Merchant, arising out of or relating to: (1) the use of the Monument and its facilities, (2) any repairs or alterations which Merchant may make upon the Premises, or (3) this Concession Agreement. Merchant's obligation to indemnify City and save City harmless shall include the retention and payment of reasonable legal counsel and investigative services and the payment of all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made in or has been made.

ARTICLE 21. DEFAULT

- **21.1. Default by Merchant.** The occurrence of any one or more of the following events shall constitute an **Event of Default** of this Concession Agreement by Merchant:
 - **21.1.1. Failure to Open.** The failure by Merchant to open for operation within twenty-four (24) months after the Concession Agreement Commencement Date or within a time period further extended in writing by City, City may cancel this Concession Agreement upon written notice to Merchant of its failure to open and City's election to cancel (see Section 4.2, page 3, for continuous operation requirements). Merchant shall then be subject to all Concession Agreement cancellation penalties provided herein;
 - **21.1.2. Failure to Pay Rent.** The failure by Merchant to make any payment of Rent pursuant, but not limited, to Section 1.4 and Article 6, or any other payment required to be made by Merchant under this Concession Agreement, as and when due;
 - **21.1.3. Abandonment.** Subsequent to the commencement of Merchant's business operations, the abandonment of the Premises by Merchant, as defined in California Civil Code section 1951.3;
 - **21.1.4. Unintended Use of Premises.** The use of the Premises by Merchant for purposes other than those specified in Section 1.6 and Exhibit E, or the failure by Merchant provide the goods and/or services as delineated in Section 1.6 and Exhibit E;
 - 21.1.5. Breach Of Concession Agreement Provisions. The failure by Merchant to observe or perform any of the covenants or provisions of this Concession Agreement to be performed by Merchant, other than as specified in or above, and where such breach can be cured, where such failure shall continue for a period of three (3)

calendar days after written notice thereof from City to Merchant specifying the nature of such failure or such longer period as is reasonably necessary to remedy such default, provided that Merchant shall continuously and diligently pursue such remedy at all times until such default is cured. To the extent permitted by law, such three (3) day notice shall constitute the sole and exclusive notice required to be given to Merchant;

- **21.1.6. Insolvency.** (a) the making by Merchant of any general arrangement or general assignment for the benefit of creditors; (b) Merchant becoming a "debtor" as defined in 11 U.S.C. ∋ 101or any successor statute thereto (unless, in the case of a petition filed against Merchant, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of Merchant's assets located at the Premises or of Merchant's interest in this Concession Agreement, where possession is not restored to Merchant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Merchant's assets located at the Premises or of Merchant's interest in this Concession Agreement, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section is contrary to any applicable law, such provision shall be of no force or effect; or
- **21.1.7. False Statements.** The discovery by City that any financial statement given to City by Merchant, or its successor in interest or by any guarantor of Merchant's obligation hereunder, including, without limitation, statements given pursuant to Article 7 (page 14), was knowingly and materially false.
- **21.2. Remedies.** In the event of any Event of Default or breach of this Concession Agreement by Merchant, City may at any time thereafter, with or without notice or demand and without limiting City in the exercise of any right or remedy which City may have by reason of such default:
 - Termination Of Concession Agreement. City may terminate this Concession Agreement and recover possession of the Premises. Once City has terminated this Concession Agreement, Merchant shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from Merchant: (1) the worth at time of award of damages of any unpaid Rent, expenses, or other sums due under this Concession Agreement that had been earned at the time of termination, to be computed by allowing interest at the rate set forth in Section 6.5.1 (page 13), but in no case greater than the maximum amount of interest permitted by law; (2) such amount as is necessary to compensate City for the detriment proximately caused by Merchant's failure to perform his obligations under this Concession Agreement, or which in the ordinary course things would be likely to result therefrom, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new merchant (whether for the same or a different use), and any special concessions made to obtain a new merchant; (3) the worth at time of award of damages of the amount by which unpaid Rent which would have been earned between the time of the termination and the time of award exceeds the amount of unpaid Rent that Merchant proves could be reasonably avoided, to be computed by allowing interest at the rate set forth in Section 6.5.1 (page 13), but in no case greater than the maximum amount of interest permitted by law; (4) the worth at the time of award of damages of the amount by which the unpaid Rent for the balance of the Term of this Concession Agreement after the time of the award exceeds the amount of unpaid Rent that Merchant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%); and (5) other amounts as may be permitted by law.
 - 21.2.2. Continuation Of Concession Agreement. City has the remedy described in California Civil Code section 1951 (City may continue Concession Agreement in effect after Merchant's breach and abandonment and recover Rent as it becomes due, if Merchant has the right to sublet or assign, subject only to reasonable limitations).

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Accordingly, if City does not elect to terminate this Concession Agreement on account of any Event of Default by Merchant, City shall be entitled to enforce all of City's rights and remedies under this Concession Agreement, including the right to recover the Rent as it becomes due.

- 21.2.3. Failure To Surrender Premises. If Merchant fails to surrender the Premises upon the termination of this Concession Agreement or should Merchant holdover beyond thirty (30) days following written notice to vacate, Merchant shall indemnify City for any liability or damages it may suffer as a result of City being unable to deliver the Premises to a new merchant in addition to any other liabilities accruing to City.
- **21.2.4. Other Remedies.** Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of California, include, but not be limited to, those rights as provided in California Civil Code section 1951.2, as amended. Unpaid installments of Rent and other unpaid monetary obligations of Merchant under the provisions of this Concession Agreement shall bear interest from the date due at the maximum rate then allowable by law. Enforcement of City's remedies shall not affect the rights of any bona fide conditional vendor, chattel mortgager, or other person having a security interest in Merchant's fixtures and equipment.
- 21.3. City's Cumulative Rights; No Waiver of Default. Except where otherwise provided, all rights, options and remedies of City contained in this Concession Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Concession Agreement. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. The acceptance by City of Rent or other payments with knowledge of the breach of any of the provisions of this Concession Agreement by Merchant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, provision, or condition of this Concession Agreement shall not be construed as to waiver of any subsequent breach of the same covenant, provision, or condition. The consent or approval of City to any act by Merchant requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent or approval to any subsequent similar acts by Merchant.
- **21.4.** Eminent Domain. If all or a portion of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or agreed purchase in lieu thereof, City shall have the option to either terminate this Concession Agreement as of the date when title to the Premises so purchased are taken, or reduce the Base Rent herein pro rata, in which case City is under no obligation to restore or reconstruct the Premises. Merchant may seek to claim damages, if any, to the extent such a claim is supported and consistent with the law. In the event that City relocates the business which occupies these Premises, City shall provide appropriate relocation assistance if required to pursuant to Section 22.632 of the City of Los Angeles Administrative Code and any subsequent amendments thereto.
- 21.5. Application of Funds. Any payments received by City under any provisions of this Concession Agreement during the existence or continuance of any Event of Default (including payments made to City rather than Merchant due to the existence of an Event of Default) shall be applied to Merchant's obligations in the order which City may determine or as may be prescribed by the laws of the State of California, and the retention by City of any funds from Merchant which are due but are not sufficient to cure any existing monetary default (whether or not any notice of such default shall have been given) shall not cure such default but only reduce Merchant's debt in such amount, notwithstanding any assertion by Merchant to the contrary.

- 21.6. Right of Re-Entry. If an Event of Default by Merchant has occurred and Merchant has abandoned the Premises, then City shall also have the right to enforce the provisions of California Civil Code sections 1980 through 1991. Merchant shall allow re-entry by City without hindrance, and City shall not be liable in damages or guilty of trespass. No re-entry or taking of possession of the Premises by City pursuant to this Section shall be construed as an election to terminate this Concession Agreement unless a written notice of such intention shall be given to Merchant or unless the termination hereof shall be decreed by a court of competent jurisdiction. For the purposes of this Article, Merchant's right to possession shall not be deemed to have terminated by efforts of City to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect City's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by City without terminating Merchant's right to possession.
- **21.7. Default by City.** City shall not be in default unless City neglects or fails to perform or observe any of the covenants, provisions or conditions contained in this Concession Agreement on its part to be performed or observed within sixty (60) calendar days after written notice of default (or if more than sixty (60) calendar days shall be required because of the nature of the default, if City shall fail to commence work to cure the default within sixty (60) calendar days after notice and diligently pursue such work to completion).
- 21.8. Administrative Fees. Pursuant to the City Rules and Regulations attached as Exhibit C-1 and Exhibit C-2 and as may be amended from time to time by the Commission, the El Pueblo Department may provide written notice to Merchant of a violation of the use provisions and/or the Non-Encroachment Policy Regarding the Display of Merchandise. Consistent with the City Rules and Regulations, Merchant shall promptly pay to City the applicable service charge. Merchant acknowledges and agrees that such violations will cause City to incur costs and expenses not contemplated by this Concession Agreement, the exact amounts of which will be extremely difficult to ascertain, and that such service charge represents a fair estimate of the costs and expenses which City would incur having to pursue enforcement of the terms of the Concession Agreement. Merchant further agrees that such service charge shall neither constitute a waiver of Merchant's default with respect to such Concession Agreement violations, nor prevent City from exercising any other right or remedy available to City.

ARTICLE 22. MANDATORY CITY REQUIREMENTS

- **22.1. Standard Provisions for City Contracts.** Attached hereto and incorporated by reference into this Concession Agreement is Exhibit J entitled "Standard Provisions for City Contracts" ("**Standard Provisions**"). Throughout the Concession Agreement Term, Merchant shall comply with the Standard Provisions and applicable City Ordinances, and any amendments thereto. Any conflict between the provisions in the Articles of this Concession Agreement and the Standard Provisions shall be resolved in favor of the Articles of this Concession Agreement.
- 22.2. Merchant Evaluation. At the end of the Term of the Concession Agreement, the City will conduct an evaluation of the Merchant's performance. The City may also conduct reasonable annual evaluations of the Merchant's performance during the term of the Concession Agreement according to its Guidelines and Standards. (See Exhibit D for further provisions.) As required by Section 10.39.2 of the Los Angeles Administrative Code, or a successor code section, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the Merchant assigns to the Concession Agreement. A Merchant who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The response of Merchant may include measures taken by Merchant to address and resolve any issues associated with a rating of "Marginal" or "Unsatisfactory" and Merchant's response may include any relevant documentation. The City shall retain Merchant's response. Upon reasonable written notice and at Merchant's expense, City shall provide Merchant a copy of City files concerning the Merchant's Evaluations. The City

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will use the final City evaluation, and any response from the Merchant, to evaluate proposals and to conduct reference checks when awarding other service contracts.

22.3. Ordinance Language Governs. In the event of a discrepancy between this Concession Agreement or Exhibit and the applicable ordinance language, as amended, the language of the ordinance shall govern.

ARTICLE 23. MISCELLANEOUS PROVISIONS

- 23.1. Accord and Satisfaction. No payment by Merchant or receipt by City of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction and City may accept such check or payment without prejudice to City's right to recover the balance of such Rent or pursue any other remedy provided in this Concession Agreement. Merchant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Concession Agreement or imposed by any statute or at common law.
- **23.2. Adult Supervision.** Merchant will maintain or cause to be available adult supervision adequate to supervise and control visitors to the Premises.
- **23.3.** Approval for Displays. Merchant will secure approval from the Property Manager for all exhibits used on display in the Premises.
- **23.4. Binding Effect.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
- **23.5. Brokers' Commissions.** Merchant hereby agrees to indemnify and hold harmless City for any claims for brokers' commissions asserted by any broker making a claim based on its representation and/or alleged representation of Merchant.
- **23.6.** Captions, Table of Contents, and Index. The titles or captions of all Articles, Sections, or paragraphs, as well as the Table of Contents and the Index contained herein, are for convenience and reference only, are not intended to define or limit the scope of any provisions of this Concession Agreement, and shall have no effect on the interpretation of any provision of this Concession Agreement.
- 23.7. City's Right Of Entry. City reserves the right at all reasonable times and upon reasonable notice to Merchant to enter the Premises to: (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or ground or underlying lessors, or, during the last twelve (12) months of the Concession Agreement Term, prospective Merchants; (iii) post notices of nonresponsibility: or (iv) alter, improve or repair the Premises, the building or the Monument if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Building or Monument. Notwithstanding anything to the contrary contain in this Section. City may enter the Premises at any time to (A) perform services required of City: (B) take possession due to any breach of this Concession Agreement in the manner provided herein; and (C) perform any covenants of Merchant which Merchant fails to perform. Except as provided in Article of this Concession Agreement. City may make any such entries without the abatement of Rent and may take such steps as required to accomplish as expeditiously as reasonably possible and in a manner so as to cause as little interference to Merchant as reasonably possible. Merchant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Merchant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned thereby. For each of the above purposes. City shall at all times have a key with which to unlock all the doors in the Premises, excluding Merchant's vaults, safes and special security areas designated in advance

by Merchant. Only authorized City personnel shall have access to the keys and the keys shall be kept in a secure location only accessible by an electronic lock that records the identity, date and time that someone gains access to the location of the keys. In an emergency, City shall have the right to use any means that City may deem proper to open the doors in and to the Premises. Any entry into the Premises by City in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an actual or constructive eviction of Merchant from any portion of the Premises. During the final month of the Term of this Concession Agreement, City may display thereon appropriate notices relating to leasing of the Premises in such manner as not to unreasonably interfere with Merchant's business.

- 23.8. Conflict of Laws And Venue. This Concession Agreement shall be governed by and interpreted in accordance with the law of the State of California. Venue in any action arising out of this Concession Agreement will be proper only in the County of Los Angeles, State of California.
- 23.9. Corporate Resolution. If Merchant is a corporation and the signatories for Merchant are not two officers of the corporation as specified in California Corporations Code Section 313, , or a successor code section, then prior to or contemporaneous with the execution of this Concession Agreement, Merchant shall provide to City a current copy of its corporate resolution depicting the names, titles and legal signatures of the officer or officers of the corporation authorized to execute legal documents, including this Concession Agreement, on behalf of Merchant. Within thirty (30) days after Merchant's receipt of City's written request, Merchant shall provide to City an updated corporate resolution depicting such names and legal signatures.
- **23.10.** Covenants and Agreements: The failure of Merchant or City to insist in any instance on the strict keeping, observance or performance of any covenant or agreement contained in the Concession Agreement, or the exercise of any election contained in the Concession Agreement shall not be construed as a waiver or relinquishment for the future of such covenant or agreement, but the same shall continue and remain in full force and effect.
- **23.11. Days.** All references in this Concession Agreement to less than ten (10) days shall mean business days; otherwise, "days" shall mean calendar days unless specifically modified herein to be "business" or "working" days. All references to "**notice**" shall mean written notice given in compliance with Article 2). All references, if any, to "**month**" or "**months**" shall be deemed to include the actual number of days in such actual month or months.
- **23.12.** Exhibits Incorporation in Concession Agreement. All exhibits referred to are attached to this Concession Agreement and incorporated by reference as though fully set forth in the body of the Concession Agreement.
- 23.13. Force Majeure. Except as otherwise provided in this Concession Agreement, whenever a day is established in this Concession Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of disruption of service or brownouts from utilities not due to action or inaction of City, wars, insurrections, rebellions, civil disorder, acts of terrorism, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial inability excepted) ("Force Majeure"); provided, however, that nothing contained in this Section shall excuse Merchant from the prompt payment of any Rent or other charge required of Merchant hereunder. Neither party shall be liable for, and in particular Merchant shall not be entitled to any abatement or reduction of Rent or right to terminate by reason of, any such delays or failures or other inability to provide services or access under this Concession Agreement due to Force Majeure.

In the event a Force Majeure exists for more than thirty (30) continuous days, either party may elect to terminate the Concession Agreement and such termination shall not constitute a breach.

- **23.14.** Memorandum of Concession Agreement. A Memorandum of Concession Agreement, substantially in the form as that attached to this Concession Agreement as Exhibit K shall be completed and executed by both parties concurrently with the execution of this Concession Agreement. City may record such Memorandum of Concession Agreement. Merchant understands that this Concession Agreement may be considered a public document and, therefore, may be made available to members of the general public.
- **23.15.** No Partnership or Joint Venture. Nothing contained in this Concession Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between City and Merchant. Neither the method of computation of Rent nor any other provision contained in this Concession Agreement, nor any acts of the parties hereto, shall be deemed to create any relationship between City and Merchant other than the relationship of Landlord and Merchant.
- 23.16. No Relocation Assistance. Merchant acknowledges that it is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act (Government Code section 7260, et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C.A. → 4601, et seq), or any other provisions of law upon termination of this Concession Agreement except in the event of condemnation of Merchant's Concession Agreement hold interest. Merchant therefore waives any claim to such assistance or benefits. Notwithstanding the above, Merchant may seek relocation assistance if any is available pursuant to City Rules and Regulations as attached in Exhibit C, and as may be amended from time to time by the Commission, or as provided by the Los Angeles Administrative Code Section 22.632(b), as may be amended from time to time by City.
- **23.17.** Partial Invalidity. If any provision or condition contained in this Concession Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Concession Agreement, or the application of such provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other provision and condition of this Concession Agreement shall be valid and enforceable to the fullest extent possible permitted by law.
- 23.18. Prior Agreement/Amendments. This Concession Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Concession Agreement, and no prior agreement or understanding, oral or written, expressed or implied, pertaining to any such matter shall be effective for any purpose. This Concession Agreement cannot be altered, changed, modified or added to, except as approved in writing by the City Council of City of Los Angeles and signed by the General Manager of the El Pueblo Department and by Merchant, or their successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Concession Agreement to the extent they are not incorporated herein.
- **23.19. Quiet Enjoyment.** Upon conformance by Merchant with the covenants, provisions, and conditions of this Concession Agreement, Merchant shall peaceably and quietly hold and enjoy the Premises for the Term of this Concession Agreement without hindrance or interruption by City, or any other person or persons lawfully or equitably claiming by, through, or under City, subject, nevertheless, to the provisions and conditions of this Concession Agreement.
- **23.20.** Remodeling of the Monument. City reserves the right at any time or times during the Term of this Concession Agreement, to remodel, refurbish, alter, or expand all or any parts of the Monument.

- **23.21. Time.** Time is of the essence with respect to the performance of every provision of this Concession Agreement in which time or performance is a factor.
- 23.22. Filming: Merchant acknowledges and agrees that City, in its sole discretion, may use the Monument to accommodate commercial filming at the Monument. Merchant agrees that commercial filming that involves use of the Monument will not affect Merchant's Rent obligations under Article 6. Merchant further agrees that any revenue generated by the commercial filming that involves use of the Monument will be payable exclusively to the City; Merchant will have no right to any filming revenue for the use of the Monument. Any commercial filming within the Premises or that materially impedes access to the Premises shall be consistent with City Rules and Regulations attached in Exhibit C, and as may be amended from time to time by the Commission.

IN WITNESS WHEREOF, the City of Los Angeles, a municipal corporation, acting by and through its El Pueblo de Los Angeles Historical Monument Authority Commission, owner herein, and Los Los Los Los Merchant herein, have caused this Concession Agreement to be executed as of the date of the attestation by the City Clerk.

APPROVED AS TO FORM: CARMEN A. TRUTANICH, City Attorney	CITY: CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL
By: Onet R Bogner Deputy City Attorney	PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION
DATE: 1-14-16	DATE: BUILDING
ATTEST: JUNE LAGMAY, City Clerk By:	By: Secretary to the Board of Commissioners
Deputy Deputy	DATE:
C-119124.	MERCHANT: LA GOLONDRINA CAFE
C. KUAH COMM. # 1860312	MERCHANT: LA GOLONDRINA CAFE BY: PRESIDENT
COMM. EXPIRES AUG. 7, 2013	DATE: 6-30 title
, , , , , , , , , , , , , , , , , , , ,	MERCHANT:
	By:title
	DATE:
	MERCHANT:
	By:title
	DATE:
	MERCHANT:
	By:title

DATE:_

INDEX

State of California)	
County of Los Angeles) On Los Angeles Deformed to before more consumple of the basis of satisfactory evidence to be the person whose name is subscribed to the with instrument and acknowledged to me that he/she executed the same in his/her authorize capacity, and that by his/her signature on the instrument the person, or the entity upon behalf which the person acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.	of
WITNESS my hand and official seal. Signature	-3
On	to in ed of
Signature (seal)	

Olvera Street Merchant Waiver and Release

Merchant represents that he or she has lawfully occupied Olvera Street Premises Space wince at least 1999 pursuant to an authorized concession agreement. Some merchants on Olvera Street claim they are entitled to the provisions of a lease drafted in 1999, and further claim that the City has for many years sought to impose on the merchants a new concession agreement with terms, rents and common area maintenance fees that are unfair and unreasonable. On January 31, 2011, the Olvera Street Merchants Association (OSMA), the organization that represents a majority of the merchants, and 47 merchants filed a claim for damages against the City. The City denied the claim.

After many months of negotiations between the City and OSMA, a new concession agreement was approved by the El Pueblo Commission and the Los Angeles City Council.

In order to sign the new concession agreement, the Merchant must make clear his or her intention to accept the new concession agreement as the final and binding resolution of any dispute the Merchant has with the City relating to the Merchant's tenancy and/or lease claims to the Premises. Therefore, Merchant, and any successor in interest or assignee of Merchant, waives, releases and forever discharges the City of Los Angeles and its respective officers, employees and agents from any and all complaints, claims and liabilities of any kind or nature whatsovever, known or unknown, suspected or unsuspected which Merchant has or claims to have now or at any time hereafter relating to the Merchant's tenancy and/or lease claims to the Premises, including, but not limited to, the assertions made in the claim for damages filed against the City on January 31, 2011.

Waiver under Section 1542. Merchant expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

A Golondoma CAFE, INC., CTD.
Merchant's Name

Merchant's Signature

Date: <u>Q-30-//</u>

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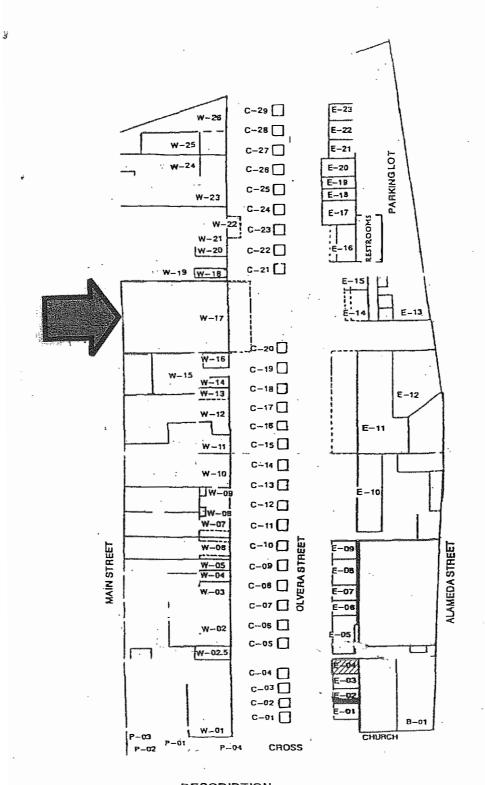
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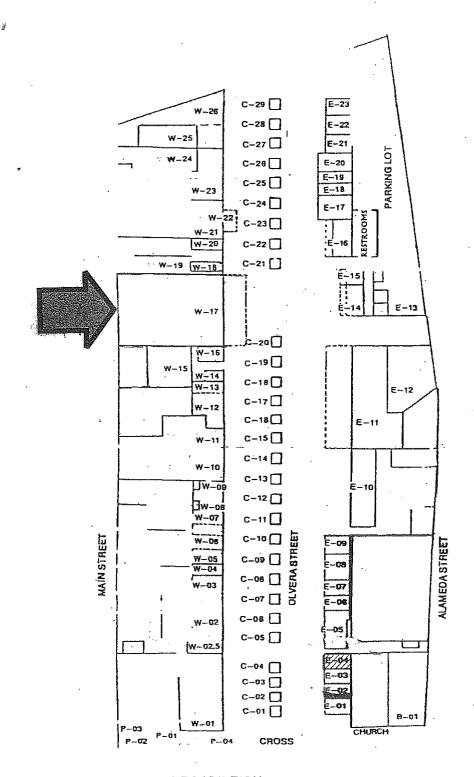
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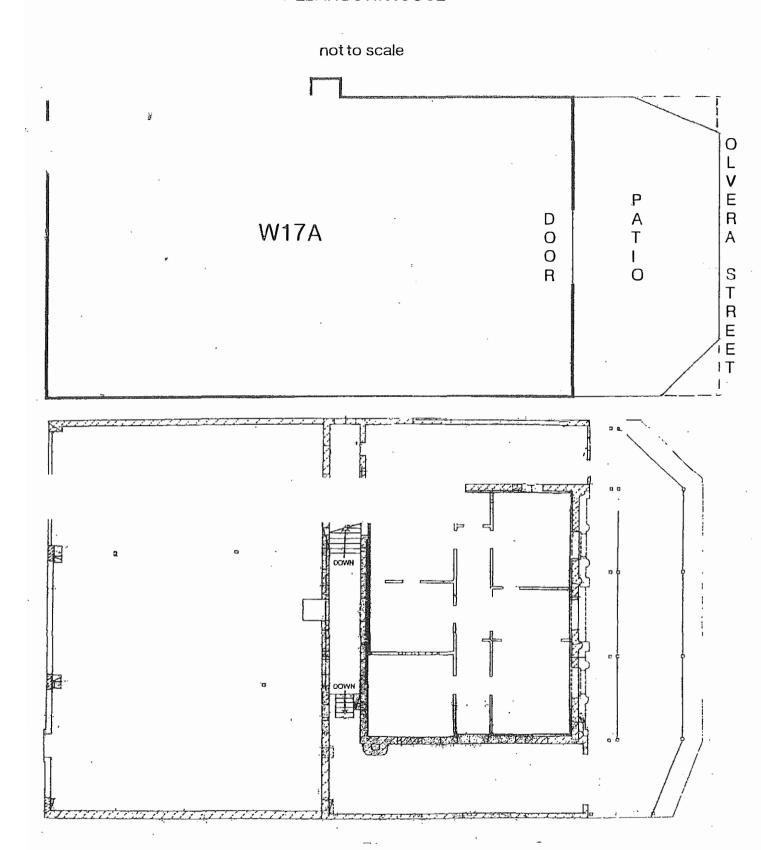
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DESCRIPTION EXHIBIT A

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EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT

RULES AND REGULATIONS FOR OLVERA STREET CONCESSIONAIRES EXHIBIT C

The following Rules and Regulations are established for Olvera Street and the Monument to make a pleasant, clean, safe and family-oriented environment to conduct a business. The Rules and Regulations are a part of the Concession Agreement and compliance is important. The Commission may amend these Rules and Regulations during open public meetings.

Concessionaires shall comply with all applicable laws, rules, regulations, and orders existing during the term of the concession agreement, including obtaining and maintaining all necessary permits, insurance and licenses.

Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and City building codes and regulations.

I. NOTICES:

All notices, payments, copies of insurance, etc., required to be filed with or given to EL PUEBLO shall be filed or given at the EL PUEBLO Property Management Office as identified in Article 1. Basic Provisions, Section 2.2. All decisions to be rendered by EL PUEBLO shall be made by its General Manager or his representative. All notices required to be filed or given to CONCESSIONAIRE shall be addressed to his/her home residence as indicated Article 1. Basic Provisions, Section 2.2.

II. DAYS AND HOURS OF OPERATIONS:

All concessions shall be operated at least six days each week. CONCESSIONNAIRE shall declare his one closure day, if any, in writing to EL PUEBLO. Mondays or Tuesdays are considered to be the most appropriate closure days. In no instance are the concessions to be closed on weekends, holidays or during EL PUEBLO special events. Although CONCESSIONNAIRE may hire employees, personal attention is also mandatory. Each individual named as CONCESSIONNAIRE (or each manager, if CONCESSIONNAIRE is a corporation) shall devote substantial and on-going personal ON-PREMISES attention to the operation of the business. (Concession Agreement, Article 4, Merchant's Conduct of Business, Item 4.3)

CONCESSIONNAIRE shall operate his concession an adequate number of hours each day to meet public demand. EL PUEBLO may establish given hours and may vary said hours seasonally or otherwise.

III. APPEARANCE AND CONDUCT:

The following provisions apply to all CONCESSIONNAIRES and their employees. Non-compliance by an employee shall be deemed non-compliance by the CONCESSIONNAIRE.

- A. All CONCESSIONNAIRE must maintain a neat and clean appearance at all times.
- B. Wearing of Mexican-style period costumes is required. Non-compatible clothing is prohibited.

- C. Courtesy shall be practiced at all times.
- D. Prices must be posted at all times for all merchandise.
- E. Cash register receipts shall be recorded at time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total which shall be sealed in a manner approved by El Pueblo, and having such other features as required and approved by El Pueblo.
- F. Public complaints should be settled by CONCESSIONNAIRE as quickly and as amicably as possible. Merchandise exchanges and refunds are encouraged.
- G. The EL PUEBLO Administration is empowered to arbitrate all customer disputes and its decision shall be binding.
- H. CONCESSIONNAIRE shall conduct his business in a manner consistent with the objectives of a park atmosphere and "customer is always right" service. Aggressive selling is prohibited.
- I. CONCESSIONNAIRE will maintain or cause to be available adult supervision adequate to supervise and control visitors to the premises and shall not permit anyone not otherwise connected with the concession to be on the premises.
- J. Drinking of intoxicants by CONCESSIONNAIRES or employees during working hours is prohibited.
- K. Nothing is more important to the City of Los Angeles than the safety and security of its employees, customers, and visitors. El Pueblo is committed to maintaining El Pueblo free from violence or threats of violence. Threats, threatening behavior, or acts of violence against a CONCESSIONAIRE, City employee, a customer, a visitor, or any other individual cannot and will not be tolerated. All reports of El Pueblo violence will be taken seriously and will be investigated promptly and thoroughly by the Administration.
- L. It is prohibited to harass and discriminate on the basis of race, religion, gender, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, and gender identity, source of income, or Vietnam era veteran's status, or other protected status under applicable law.

IV. MERCHANDISE:

CONCESSIONAIRE will provide visitors with high-quality experience that exemplifies the vibrancy and convivality of the historic ambiance of the City of Los Angeles' birthplace. Olvera Street is part of the Los Angeles story. In 1926, Christine Sterling's saved the Avila Adobe from demolition and started the first themed tourist destination in California, the Olvera Street Mexican Marketplace. The no-bid Concession Agreements were awarded to established 1999 Olvera Street concessionaires to preserve the ambiance of a Mexican Marketplace. To restore and protect the Mexican Marketplace, the Department will have the authority to approve the nature, type, and quality of merchandise to be offered by concessionaires on Olvera Street. All merchandise must support a Mexican-themed marketplace and the tradition that Christine Sterling instilled by creating opportunities for Mexican Artisans. A Mexican Artisan is defined as, a craftsperson who continues to practice the tradition reflective of their religion, gender, occupation and recreation, region, ethnicity, age, and other ways that define as part of their heritage from generation to generation. Therefore, all CONCESSIONAIRES will follow their individual Merchandise Plan as established by the Merchandise Policy for their Concession as approved by the General Manager and made a part of their concession agreement.

V. VENDING MACHINES AND INAPPROPRIATE EQUIPMENT

CONCESSIONAIRE will be allowed to operate existing Automated Teller Machines (ATMS) or cash dispenser machines in their Premises until ATM or cash dispenser machines installed by City on Monument property are operational. After the ATM or cash dispenser machines installed by City are operational, City will give CONCESSIONAIRE 30 days notice to remove all ATMs and cash dispenser machines from their Premises. Free standing mechanical, self operating or automatic vending machines, including but not limited to soda and water machines, arcade or game machines in, on, or about the Premises are not allowed and must be removed.

VI. NON ENCROACHMENT

Per the direction of EI Pueblo de Los Angeles Historical Monument Commission Authority, the General Manager or City representative is directed to conduct regular inspections of the El Pueblo de Los Angeles Historical Monument (Monument) property to verify compliance with Encroachment Rules and Los Angeles Municipal Code (LAMC) Section 57.33.11 fire code requirements, to ensure park safety for visitors, businesses and staff. Should a business encroach and a violation occurs, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If a CONCESSIONAIRE continues to display merchandise in violation of the Non Encroachment Policy, the CONCESSIONAIRE shall promptly pay to the Department the applicable service charge consistent with the Non Encroachment Policy.

VII. PUESTO, STORE AND RESTAURANT MAINTENANCE REQUIREMENTS:

CONCESSIONNAIRE shall be responsible for the cleanliness of their premises. EL PUEBLO shall regularly sweep and wash the brick surface of Olvera Street, but CONCESSIONNAIRES shall also be responsible for sweeping adjacent sidewalks when necessary. Rubbish containers on Olvera Street shall be for the exclusive use of the public. CONCESSIONNAIRES shall only us off-street containers, such as EL PUEBLO'S trash compactor.

VIII. FILMING:

El Pueblo Management shall not allow commercial filming, including but not limited to motion picture, television or commercial photography, in a Concessionaire's Premises.

IX. NO RELOCATION ASSISTANCE

CONCESSIONAIRE acknowledges that their business is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act. No form of relocation assistance is available to a Merchant other than what is authorized by City law at the time of the relocation

X. RESOURCE CONSERVATION:

A. _Environmental Conservation Program: _Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the City. Accordingly, Concessionaire shall prepare and execute a program, subject to the prior written approval of the City, designed to reduce environmental impacts that result from concession operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, pest management, grease removal and disposal, hazardous materials handling and storage, and air quality. Specifically, the program must include the following:

Recycling and Beverage Container Programs: The Concessionaire shall implement a
source reduction and recycling program designed to minimize concession and patron use
of disposable products, per Public Contract Codes Sections 12161 and 12200 et seq.
Reusable and recyclable products are preferred over "throwaways". Where disposable
products are needed, products that have the least impact on the environment will be
selected. No Styrofoam containers or other non-biodegradable containers are to be used
or sold by Concessionaire. The use of "postconsumer" recycled products is encouraged
wherever possible.

The Concessionaire shall participate fully in the California beverage container redemption/recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each contract year, Concessionaire and City shall review items sold, and containers or utensils used or dispensed by Concessionaire, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

 Water and Energy Conservation: The Concessionaire shall implement water and energy conservation measures. As new technologies are developed, Concessionaire shall explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, and/or reduced impacts on the environment.

XI. FIRE AND SAFETY PRECAUTIONS:

- A. Fire extinguishers must be kept in all locations where required, be accessible and maintained in good repair.
- B. The storage or accumulation of combustible merchandise or materials is prohibited.
- C. EL PUEBLO may conduct periodic and unannounced inspections and compliance with its findings is required.
- D. Merchandise must be kept away form automatic sprinkler heads for a distance of at least 18" in all directions.
- E. Merchandise must not be hung from pipes that supply water to automatic sprinkler heads.
- F. Merchandise must be kept away form exposed light bulbs. (Such as sun shades hung by Puestos).
- G. CONCESSIONNAIRE must comply with instructions of authorized representatives of the City Fire Department.

XII. OTHER PROVISIONS:

- A. CONCESSIONNAIRES shall refrain from the use of personal radios and television sets for programs not compatible with Olvera Street objectives. Every effort shall be made to minimize objectionable noises. Volume of any electronic device shall be kept at such a level so as not to create discomfort to other merchants or the public. EL PUEBLO shall be the judge of the appropriate volume and location of such devices.
- B. CONCESSIONNAIRES area responsible for all necessary licenses and taxes pertaining to their businesses and records of same.
- C. CONCESSIONNAIRE shall pay any and all taxes levied by any legally constituted government agency.

- D. Retail prices established for the general public shall be the price charged to all. No commission or gratuity shall be paid to any person furnishing customers.
- E. No signs, names, place cards or advertising matter shall be inscribed, painted or affixed upon said premises, circulated or published without EL PUEBLO'S prior written consent.
- F. CONCESSIONNAIRE shall dismiss undesirable employees upon request of the El Pueblo General Manager.
- G. ONE STAFF PARKING space will be provided to the CONCESSIONAIRE at a thirty-five percent (35%) discount off the then-prevailing rate in the facility (subject to change and as availability of the City parking lots). The additional rent payable for this parking permit includes the 10% surcharge imposed by the City of Los Angeles parking occupancy tax (Ordinance No. 165.949). Concessionaire will be billed monthly in advance for this parking. Public parking at the posted rates may be obtained in the Monument on a space available basis.

EXHIBIT C-1 NON ENCROACHMENT POLICY

Non-Encroachment is defined as the area of rented space or premises the Concessionaire is allowed to conduct business as described in the Concession Agreement. Encroachment is defined as entering or moving merchandise into an area beyond the usual or proper limits (defined rental space of the business or public footpaths).

Per the direction of El Pueblo de Los Angeles Historical Monument Commission Authority, the General Manager or City representative is directed to conduct regular inspections of the El Pueblo de Los Angeles Historical Monument (Monument) property to verify compliance with Encroachment Rules and Los Angeles Municipal Code (LAMC) Section 57.33.11 fire code requirements, to ensure park safety for visitors, businesses and staff.

Compliance with the Encroachment Rules ensure that visitors and shoppers can pass freely between shops and businesses in the public right of way and avoid potentially unsafe walkways and clearances. Most importantly, compliance ensures adequate ingress and egress for emergency personnel and evacuation of the public during an emergency.

East Side Olvera Street Businesses

- No merchandise may be hung or displayed more than eighteen inches (18") from the surface wall
 of any Puesto along an aisle facing Olvera Street per LAMC Section 57.33.11. No merchandise
 may block access to any doorway or stairway, or hang from surface walls of any building.
- No merchandise may be displayed in, on, or around planter area, fountains, or common areas.
- Tables, rack, poles, and similar items, may be displayed eighteen (18") inches from the walls facing Olvera Street, on both the east and west aisles. Racks and poles must be secured to prevent tipping over in the event of an emergency, and to prevent injury to the public. Racks and poles must be stored at the end of business each day.
- For those businesses not located at the end of a row, merchandise may be hung directly against the sidewalls, three (3') feet away from fire life safety equipment. Passage between the Puestos/businesses **must not** be impeded.
- For those businesses located at the end of a row, merchandise may be hung directly against sidewlls under the roof line, from the side accessible to the public.
- No soft canopies are permitted without prior written approval from El Pueblo's General Manager.
 Any approved soft canopy must be seven (7') feet high, and flame retardant as approved by LAMC Section 57.33.11.

Center Puestos

- No merchandise may be hung or displayed more than eighteen inches (18") from the east facing surface wall of any center business along Olvera Street. No merchandise may be hung or displayed more than twenty-four inches (24") from the west facing surface wall per LAMC Section 57.33.11.
- For those businesses not located at the end of a row, merchandise may be hung directly against the sidewalls, three (3') feet away from fire life safety equipment. Adequate room between puestos is required to permit safe passage.
- For those businesses located at the end of a row, merchandise may be hung directly against the sidewalls under the roof line, from the side accessible to the public.
- Tables, rack, poles, and similar items, may be displayed eighteen (18") inches from the walls facing Olvera Street, on both the east and west aisles. Racks and poles must be secured to prevent tipping over in the event of an emergency, and to prevent injury to the public. Racks and poles must be stored at the end of business each day.
- No merchandise may be displayed in, on, or around planter area, fountains, or common areas.

Western Olvera Street Busmesses

No merchandise may be hung or displayed or block access to any doorway, railing or stairway, or hang from any surface wall of any building per LAMC Section 57.33.11.

No merchandise may be displayed in, on, or around planter area, fountains, or common areas.

Soft canopies are not permitted per LAMC Section 57.33.11.

Doors must fold flat against exterior walls and must not be left ajar or at an angle to display merchandise.

Production and Special Event Companies

Production companies, special event producers and others renting Monument facilities are subject to specific terms and conditions set-forth in executed contracts. The agreements delineate specific Monument areas paid for by these production and special event companies. If a company encroaches beyond the permitted area(s) staff will inform the company to comply and stay within the contracted "foot-print" to keep public footpaths clear and safe, or they will be charged additional rental fees and possibly cited by the Los Angeles Fire Department.

Additionally, any alterations to existing structures that includes nailing, screwing or painting of Monument property is strictly prohibited unless previously authorized by the Monument. Contracted companies are subject to an additional fine for each violation.

Violation Process:

Should a business encroach and a violation occurs, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If, however, the concessionaire/business does not comply with a request to correct the encroachment, the concessionaire will receive a written warning notice to correct the encroachment violation. The business owner will have five (5) days after receipt of the warning letter to correct the encroachment.

If the concessionaire does not correct the violation on or before the sixth (6th) day from receipt of the written warning, the department will issue a 2nd written notice of the violation and the business owner will be required to pay to the City an administrative fee for the cost to enforce the encroachment violation incident. The estimated administrative fee is one hundred dollars (\$100.00) per violation.

The business owner acknowledges and agrees that such enforcement of the encroachment will cause the City to incur costs and expenses, and the exact amounts of which, will be difficult to ascertain for the term of the concession agreement, and that such administrative fees represents a fair estimate of the costs and expenses the City would incur by reason of enforcement.

If the business/concessionaire fails to remove or adhere to the Encroachment Rules on the seventh (7th) day of the violation, a 3rd written notice to the business owner will be issued and the business owner will be required to pay an additional one hundred dollars (\$100.00) per each violation.

If by the tenth (10th) day, the business owner continues to be in violation of the Encroachment Rules, the business owner will be in violation of the Concession Agreement Section 18.2.1 and be charged for cost of such work to remove the merchandise or materials that are causing unsafe conditions.

EXHIBIT C-2 EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT

MERCHANDISE POLICY FOR OLVERA STREET CONCESSIONS

It is the objective of the City of Los Angeles El Pueblo de Los Angeles Historical Monument Department (Department) to provide visitors with high-quality experience that exemplifies the vibrancy and conviviality of the historic ambiance of the City of Los Angeles' birthplace. It is the policy of the Department to approve the nature, type, and quality of merchandise to be offered by businesses on Olvera Street that support a Mexican-themed market and the tradition that Christine Sterling instilled by creating opportunities for Mexican Artisans. A Mexican Artisan is defined as, a craftsperson who continues to practice the tradition reflective of their religion, gender, occupation and recreation, region, ethnicity, age, and other ways that define them as learned from their family or community that has been part of their heritage over a long period of time over three or more generations.

All concession agreements for Olvera Street require a Merchandise Plan. The El Pueblo de Los Angeles Historical Monument Authority has authorized the General Manager to approve all Merchandise Plans to maintain diversity, quality and quantity of products and services. Olvera Street has a unique identity achieved through a combination of merchandise, presentation, ambience and services all working together. In this regard, the "one of a kind" businesses play a vital role in creating that sense of a unique historic district distinction.

Due to the uniqueness of each tradition, and the many layers of ethnicity, race and culture over centuries, it is impossible to create a comprehensive list for the term of the Concession Agreement for the next twenty years that name every product and service reflective of Mexican and Latin American folk-art. Therefore, Olvera Street Concessionaires can apply to the General Manager for the right to sell any new Mexican themed product or service not reflected in their Merchandise Plan on file with Property Management for the first twenty years of the Concession Agreement term. Each time a request for a new product or service is requested, the Concessionaire must include a validation statement to the General Manager outlining the origin of the product or service and a brief explanation as it how relates to Mexico or Latin America. The Property Management Division concession file will contain approvals for any addition or deletion of product as listed in the Merchandise Plan on file in 2011. If the Concession Agreement is renewed in 2041, a new Merchandise Plan will be required.

Priority will be given to products and services that foster awareness, understanding, and appreciation of Mexican products and services that interpret the traditions and culture of Mexico and Latin America.

Background:

The historic beginnings of Olvera Street as a Mexican Marketplace began after 1930. However, before 1930 the street had historic significance to the Gabrieleno Yang-na Village, the first Spanish settlement (1818-1822) in Los Angeles County, and for a short period rule under the country of Mexico (1822-1848). After 1848 through the 1920s the flow of history and contributions of Chinese, Italian, French, Jewish, African-Americans, and many other ethnic groups who settled in Los Angeles and are associated with the development of this great City as interpreted through our programs, exhibits and museums. Olvera Street is part of the Los Angeles story that starts with Christine Sterling's drive to save the Avila Adobe in 1926. By the 1920s the area today known as the Plaza and Olvera Street had suffered from decline due to the relocation of many businesses further south to the emerging new downtown business area. With

the help of Harry Chandler, publisher of the LOS ANGELES TIMES, and several other prominent business and professional leaders of the community, Ms. Sterling created a Mexican Marketplace on Olvera Street into a colorful landscape reminiscent of "Old Mexico" to reinvigorate the area into a lively Mexican-themed marketplace. She brought fiestas and Mexican traditions with the help of the Mexican-American community. Colorful handcrafted Mexican products were sold and artisan demonstrations created an opportunity for the visiting public to experience the Mexican culture. The Mexican Marketplace concept became a popular tourist destination peaking in the 1980s.

Merchandise Plans have been a requirement for all businesses on Olvera Street for over 50 years. The Merchandise Plans must be enforced by the Department to ensure Olvera Street is maintained as a viable example of a Mexican themed marketplace, forever preserving the market flavor and Mexican atmosphere and adjoining buildings envisioned by Christine Sterling. The Commission authorizes the General Manager to give exclusivity to businesses that offer handmade goods that utilize artisan techniques in front of the public that demonstrate their unique craft. The Commission recognizes that single product/service authority, protects individual craftperson's intellectual property and promotes the vision Christine Sterling provided in the 1930s of Mexican Marketplace. Businesses that copy the product from authorized craftspersons and cast them as hand-made items to sell in their businesses will be in violation of the Merchandise Policy. The Merchandise Policy will be strictly enforced.

Today, tourists from around the world continue to visit Olvera Street to enjoy the Mexican Marketplace theme. However, some of the distinct characteristics of Christine Sterling's vision have been blurred by an overwhelming flood of retail goods not connected to Mexican arts or products. Several factors over the last 50 years have lead to the decline in the Mexican Marketplace theme:

- 1. In 1964, the addition of several center puestos bifurcated the street and eliminated the open air walkway;
- 2. Many craftspeople and families from the 1930s sold their businesses in the early 1960S and 1970s to individuals that were not Mexican artisans (candlemaker, blacksmith, glass blower, newsprinter, furniture maker, confectioner, etc);
- 3. Merchandise plans that were in place during Christine Sterlings' management were not enforced after her death in 1964;
- 4. Items that are not Mexican themed or Mexican made are displayed more prominently than Mexican handcrafts; and
- 5. Business owners copy/compete to sell the same merchandise as their business neighbors—at reduced prices.

Individual Olvera Street Merchandise Plan Requirements:

The City is cognizant that every retailer is challenged with how to effectively plan and execute unique store-level assortments (mix) that match local consumer demand. However, research has shown and the success of the Mexican Marketplace from the 1930s to the 1980s indicate profit levels can be maintained through specialized mixed merchandise plans. The City recognizes there is a delicate balance that must be facilitated in order for each concession to retain a profit. The regulation and enforcement of a retail merchandising mix plan for all Olvera Street businesses will allow each concession to specialize in a store theme free of competition. The City will work with each business to intelligently build assortments of products that capture and target local and international customers and allow individual businesses to thrive. Businesses that desire to continue selling non Mexican items or non Latin themed items will be allowed to continue to sell only those items, any requests for additional non Mexican or non Latin themed items will be denied. Each Concessionaire will have 30 days to provide to the General Manager

an itemized list of products and services carried before June 1, 2011 and a Merchandise Plan that will become an Exhibit C in the Concession Agreement.

General Guidelines

There is value for businesses when there is a balanced mix of retail choices for customers. Olvera Street is located in an ideal setting. Positioned across from Union Station and the 101 Freeway, the gateway to the downtown business district, EI Pueblo has some of the oldest remaining intact historic buildings in the City of Los Angeles — there is a particular appeal and character that visitors enjoy that sets this Mexican Marketplace apart from other cities. Thus, each concession will have a role in assuring this independent retail base will be preserved as a historic destination for the general public to enjoy and for businesses to profit. Therefore, the General Manager will ensure there is a balanced mix of retail opportunities for Olvera Street Concessionaires and that the following basic guidelines will be implemented by the Department:

- 1. A quantity of tenants by category of Mexican merchandise that reinforces a "Theme" for each unique category;
- 2. A merchandise theme that has one or more of the following factors: relevance to Mexico, location of the concession, contractual obligations, unique physical features, evolving usage, public policy decisions and economic forces, including quantities of existing space by type of use or merchandising category;
- 3. A critical mass of retail diversity that achieves its identity by the creation of adjacencies or, geographic points of concentration reflective of Mexico or South American merchandise (specifically handcrafted items), thereby causing Olvera Street to stand out in customers' minds as a distinct unique Mexican Marketplace that is not replicated anywhere else in the City of Los Angeles;
- 4. A unique identity achieved through a combination of merchandise, presentation, ambience, and service all working together, including packaging, shelving, bins, and counters of natural materials supporting the 1930s Mexican Marketplace theme. In this regard, the "one of a kind" businesses on Olvera Street will play a vital role in the Retail Merchandising Mix Plan which is essential in creating that sense of unique Mexican distinction for visitors;
- 5. A mix of local, regional, and national products that is consistent with the characteristics of Olvera Street's business personality; and
- The contribution that each unique Olvera Street business can make not only by supporting the Mexican Marketplace theme to improve Olvera Street itself but also by creating a stronger message overall by offering a variety of experiences and shopper opportunities.

Elements of an Individualized Plan for Each Olvera Street Business

Olvera Street businesses are a vital component to the appearance and experience of an "Old Mexico" flavor for visitors. The Olvera Street concession program is an integration of combined efforts with the El Pueblo museums, educational programs, special events, docent activities and entertainment which contribute to the interpretation and span of time from American Indian, Spanish, and Mexican occupation to 1932 when David Alfaro Siqueiros painted the America Tropical mural on what is known today as the Italian Hall roof wall. Olvera Street Concessionaires must have, or be willing to, develop the special knowledge, experience, skills and abilities appropriate for a business that reflects a Mexican Marketplace theme. Therefore, each individual Olvera Street business will be required to submit and adhere to their plan as specified below:

1. A statement of the theme of your business and how the theme relates to a Mexican Marketplace or Latin American culture or an "OPT-OUT" Statement from the

Concessionaire indicating their desire to continue selling non Mexican items or non Latin themed items. The "OPT-OUT" statement be on file in the Property Management Division Concession file and the business will be audited monthly to ensure the business only sells those items on the inventory list. Any request for additional non Mexican or non Latin themed items will be denied by the General Manager.

2. List of all products, merchandise or services for your business. The following are acceptable categories of merchandise and products reflective of Mexican and Latin American cultures: wood/leather/metal furniture, toys, dolls, fine linens, weaver, painting, puppets, carving, stitching, sewing, lacing and beading, jewelry, pottery, silver work, leather work, tinsmithing, Huichol yarn pictures, Amate paper designs, masks, skeletons or calaveras, stamp design in the traditional ancient Mexico and Asian format, gourd designing, musical instruments, henna and body art, needlework, metal work, hammock making, Papel Picado, Ojo de Dios, Paper mache, Andrean textile design, flowers, candy, bottled sauces, spices, herbs, bottled drinks from Mexico, novelty items that reflect Olvera Street, clothing, shoes/boots and purses, theatrical and dance wear, packaged food, paintings, kitchen tools and tableware, saddle blankets, hats, wall décor, lamps and shades, plants, cow skulls and mounted horns, animal hides, sporting goods, garden furniture and goods, wreaths, music, saddles, mandellas, baskets, bells, gourds, chile ristras, rugs, books, throws and pillows, horse headstalls/breastcollars/reins/whips, games, textiles, tile, fencing/gates, canes/walking sticks, photography, money clips/key chains, vests/jackets/belts, religious novelties).

*This list is not inclusive; businesses may submit items not listed above if they can document a connection to a Mexican or South American culture.

- 3. Approval from the El Pueblo General Manager before a new product, merchandise or service is sold in order to maintain and enhance Olvera Street as a vital commercial hub and cultural destination in the downtown metropolitan area.
- 4. Prices posted on each item or printed signage above products, merchandise or service with lettering preapproved by the General Manager. All containers, shelving, bins and displays must be of natural material (woods, straw, basket, cloth, metal, paper, or rope) when in public sight. Presentation and décor should be displayed and portrayed in a manner keeping with a Mexican Marketplace theme.
- 5. Business owners and employees must be dressed in Mexican style clothing when open for business and in sight of the visiting public.
- 6. Merchandise must be "family friendly" and appropriate in a public park setting.

Merchandise Policy Violation Process:

Should a business sell an unauthorized product or service that is not approved by the General Manager or identified in their Merchandise Plan on file with the Property Management Division, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If, however, the concessionaire/business does not comply with a request to correct the sale of an unauthorized product or service, the concessionaire will receive a written warning notice to correct the violation. The business owner will have five (5) days after receipt of the warning letter to correct the sale of an unauthorized product or service.

If the concessionaire does not correct the violation on or before the sixth (6th) day from receipt of the written warning, the department will issue a 2nd written notice of the violation and the business owner will be required to pay to the City an administrative fee for the cost to enforce the violation incident. The estimated administrative fee is one hundred dollars (\$100.00) per violation.

The business owner acknowledges and agrees that such enforcement of the Olvera Street Merchandise Plan will cause the City to incur costs and expenses and jeopardize revenue for other businesses on Olvera Street, and the exact amounts of which, will be difficult to ascertain for the term of the concession agreement, and that such administrative fees represents a fair estimate of the costs and expenses the City would incur by reason of enforcement.

If the business/concessionaire fails to remove or adhere to the Merchandise Policy on the seventh (7th) day of the violation, a 3rd written notice to the business owner will be issued and the business owner will be required to pay an additional one hundred dollars (\$100.00) per each violation.

If by the tenth (10th) day, the business owner continues to be in violation of the Merchandise Policy, the business owner will be in violation of the Concession Agreement.

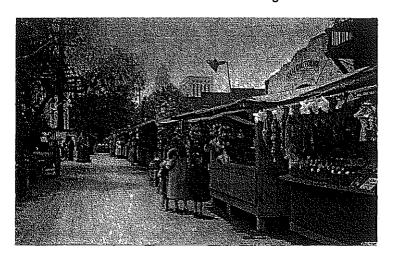






EXHIBIT D ANNUAL CONCESSIONAIRE PERFORMANCE EVALUATION STANDARDS AND GUIDELINES

At the start of each new concession agreement execution date or at the beginning of each calendar year, the Department will evaluate the performance of the entity. A concessionaire must meet all terms and conditions of the concession agreement under these categories to be rated in COMPLIANCE. Any deviation will result in a NONCOMPLIANCE rating. All other categories permit numerical ratings ranging from three to twenty points and fall within a scale of "EXCELLENT, SATISFACTORY, OR NEEDS IMPROVEMENT."

The rating for the overall evaluation shall be determined by the percentage score rating unless a concessionaire is rated NONCOMPLIANCE or UNACCEPTABLE in any category. The NONCOMPLIANCE or UNACCEPTABLE will result in the termination of the concession/contract and the end of the twenty year term (20).

The standard for the category ratings are as follows:

- An "Excellent" rating in a category shall be given when a concessionaire always meets and frequently exceeds the requirements of the agreement/contract obligation for that category.
- A "Satisfactory" rating in a category shall be given when the concessionaire consistently meets the requirements of the agreement/contract obligation for that category.
- A "Needs Improvement" rating in a category shall be given when the concessionaire is deficient in the minimum requirements of the agreement obligation for that category on more than one occasion or when the concessionaire fails to correct a deficiency after notification.

The following examples are meant to assist the rater in illustrating the differences in the rating scores:

"Excellent" - The agreement/contract requires the concessionaire/contractor's operating hours Tuesday through Sunday from 10: A.M. until 9:00 P.M., and closed on Mondays. The concessionaire was open daily from 10:00 A.M. until 10:00 P.M., one hour daily above and beyond the required operating hours.

"Satisfactory" - The concessionaire/contractor's was operating daily from 10: A.M. until 9:00 P.M and closed on Monday, and met the requirements as stated in the concession agreement.

"Needs Improvement" – The concessionaire was not open daily from 10: A.M. until 9:00 P.M. They were open from 8:00 AM to 3:00 PM Monday through Saturday. Concessionaire was notified in writing and given a notice to correct.

"Non Compliance/Unacceptable"- The concessionaire was not open daily from 10: A.M. until 9:00 P.M. They were open from 8:00 AM to 3:00 PM Monday through Saturday. Concessionaire was notified three times in writing and given a notice to correct. Concessionaire disregarded notice to correct and continues to not comply with their contractual requirements.

CONTRACTUAL OBLIGATIONS

This section covers all financial and operational aspects of the concession agreement.

Rental Payment -The rater must evaluate the concessionaire's payment record preceding year. The rental payments must be current and the correct amount. Rental payments are considered late after the 1st of every month.

Maintains a Register Journal/\$ Trail-Verify a cash register tape is used for all transactions according to the terms of the contract.

Bonds/Insurance-The rater must verify that all bond and insurance requirements are met as stipulated in the contract (i.e., performance bond, liability, automobile insurance, construction, payment bond, and fire insurance)

Compliance with Rules and Regulations-The rater verifies the concessionaire is adhering to Rules and Regulations as adopted by the Commission and the concession agreement. Any violation will result in a lower score.

Concessionaire Presence (or each manager, if a corporation) shall devote substantial and on-going personal ON-PREMISES attention to the operation of the business. (Per Article 4, Merchant's Conduct of Business, Item 4.3).

BUSINESS OPERATIONS

This section covers compliance with the concessionaire's the Rules and Regulations as stated in the concession agreement.

Operating Days and Hours-The rater verifies the concession has been open as stipulated in the Merchandise Plan.

Merchandise Policy-The rater verifies that goods and services for sale are authorized in the Merchandise Plan.

Appropriate Signage/Advertising -The rater evaluates the appropriateness of the signage for location, accuracy, professionalism, and maintenance and verifies prior approval by the General Manager?

Compliance with Non-Encroachment Policy— The rater verifies the concessionaire is adhering to Encroachment Rules, identified in Exhibit G). Any violation will result in a lower score. More than three violations and the concessionaire will receive a noncompliance/unacceptable score

MAINTENANCE

This Section covers the maintenance of the premises and adjacent areas in a clean, safe, wholesome, and sanitary condition, and in compliance with any and all laws, general rules, or regulations of any government authority during the term of the operating agreement/contract.

Maintenance Project Compliance-Rater determines if any repairs to the facility have been performed and verifies approval of the repairs or improvements by the General Manager. If a repair or improvement has not been preapproved, concessionaire may receive a noncompliance/unacceptable score.

Fire Safety Prevention-Rater checks fire extinguishers to see if they are visible and adequately marked, contain the proper chemical, and have been serviced annually. Look for evacuation routes posted in conspicuous locations, check fire exits for demarcation—free from debris and hazards. Make sure there are no explosives or hazardous goods, merchandise, or materials kept, stored, or sold in proper containers?

Utilities, Sewer, Water and Trash-Meters are kept free of litter and debris, uncluttered, and properly illuminated. Any outstanding reimbursement payments to the City for water, gas or electricity has been settled.

Interior/Exterior Cleanliness-Rater verifies there are no violations for garbage/trash containers (exterior), unclean doorways, walkways and graffiti.

After the evaluation, the rater reviews the score with the concessionaire. The rater then informs the concessionaire that a copy of the evaluation will be sent in the mail and within 14 days of receipt, the concessionaire is required to submit the signed form to El Pueblo de Los Angeles Historical Monument, 125 Paseo de la Plaza, Suite 300, Los Angeles, CA 90012, attention to the General Manager for processing.

If a dispute arises, the concessionaire may submit in writing their dispute. Final arbitration will be with the General Manager within 14 days of receipt of response. If the concessionaire fails to respond or turn in the completed evaluation, the evaluation will stand and be finalized with the signature of the General Manager.

ANNUAL PERFORMANCE EVALUATION EXHIBIT D-1

EXHIBIT E USE OF PREMISES CONCESSIONAIRES'S MERCHANDISE PLAN

MERCHANDISING PLAN "OPT-OUT" STATEMENT BY THE CONCESSIONAIRE

I,	Department and attached and verified by selling non Mexican items or non Latin
DATE: 6-30-11	DATE:
CONCESSIONAIRE:	
By: LA GORDAGINA GAFE, TAK, LTD	CONCESSIONAIRE:
/ INDIVIDUAL	By:
1/W PRES.	INDIVIDUAL

FACILITY MAINTENANCE PROGRAM EXHIBIT F

During the term of this contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than FIVE (5) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

In the event that Concessionaire desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, required accessibility barrier removal work, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively "Alteration(s)"), the approval in writing of City shall be obtained prior to the commencement of any Alterations. City shall dictate the plan approval process.

- A. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks.
- B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this contract. Such maintenance shall conform to City standards. For the purposes of this contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and

equipment in a good City of repair, as well as to preserve them for their intended purpose for an optimum useful life.

Pest inspections shall be performed regularly. Concessionaire will remedy all pest infestations in a timely manner. Concessionaire shall provide to City copies of all pest inspection reports or other professional assessments of the condition of the facilities.

Should Concessionaire fail, neglect, or refuse to undertake and complete any required maintenance, City shall have the right to perform such maintenance or repairs for Concessionaire. In this event, Concessionaire shall promptly reimburse City for the cost thereof provided that City shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs. City shall not be obligated to make any repairs to or maintain any improvements on the Premises. Concessionaire hereby expressly waives the right to make repairs at the expense of City and the benefit of the provisions of Sections 18.2.1 relating thereto if any there be. City has made no representations respecting the condition of the Premises, except as specifically set forth in this contract.

C. Removal and Restoration. At the expiration or sooner termination of this contract, Concessionaire at its own expense shall remove all personal property brought onto the Premises by Concessionaire. Concessionaire, at Concessionaire's expense, shall restore and repair the Premises, and any of Concessionaire's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.



MAINTENANCE PROJECT CONCESSIONAIRE REQUEST FOR APPROVAL

Name of Business	Date	e
	ys in advance as indicated in the Concession Ag sekeeping, Section 182.2 Merchant's Obligations	
Electrical Ro Interior Painting Ca	terior PaintingLandscaping offingHeating and Air Condition repentryMasonry	Needs Dept. assistance
Need Plans Yes No Maintenance Project Description:	Proposed Start Date:	Estimated Cost:
(Do not write below, El Pueblo Personnel onl <u>y</u> .)	
Museum Director's Signatu	re of Approval	Date
Property Manager's Signat	ure of Approval	Date
Project Evaluation Form Attached: Yes_	No	
**************************************	***********	*******
Reason for Denial:		
General Manager's Signatu	re of Approval	Date

(The General Manager must approve the Maintenance Project before the Concessionaire can start)

CONCESSION AGREEMENT AFFADAVIT FOR TIER ONE B PHASE-IN RENT EXHIBIT G

certify that my concession business located at W17/T basis and on a commercially sustainable basis	would not be profitable on an ongoing with a reasonable profitability from further certify that business revenues for the Profitability of the Profitability from the Profitability for the Profitabil
CONCESSIONAIRE: By: La GoloNobriNA Cafe INC. Print Name	LtD.
Signature DATE: $6 30 201 $ Countries of State where sixed $A A A$	C. KUAN COMM. #1860312 COMM. #1860312 COMM. EXPIRES AUG. 7, 2013
County and State where signed:	

EXHIBIT G-1 CERTIFICATION OF HARDSHIP

I,, the undersigned, under penalty of
I,, the undersigned, under penalty of perjury, certify that my concession business located at would not be
profitable on an ongoing basis and on a commercially sustainable basis with a reasonable
profitability from2011 to2012. I further
certify that business revenues for the concession would not exceed expenses by 10% if I paid Tier
One A rent as indicated in the Concession Agreement in Article 6, Rent 6.2.1. I understand that
misrepresentation or falsification of this certification or the records or documents submitted to
support the application will be grounds for rejection of the application and might subject the
Concessionaire to civil and criminal liability.
,
CONCESSIONAIRE:
By:
Print Name
Signature
DATE:
County and State where signed:

EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT CONCESSION AGREEMENT FINANCIAL HARDSHIP POLICY

FINANCIAL HARDSHIP

- 1) Who should apply? Any Concessionaire who has signed the City-approved 2011 Olvera Street Concession Agreement and claims that paying Tier One A or Tier One B rent would cause them a financial hardship as defined in the Concession Agreement Article 6.
- 2) In order to receive Tier Two Rent, the Concessionaire shall submit to an audit by the City Controller using the protocol and criteria described in Article 6 of the Concession Agreement.
- 3) Recommendation by the General Manager and Approval by the Commission After the City Controller has audited all records and documents as described in the Concession Agreement in Article 6 and confirmed the Concessionaire is eligible for Tier Two Rent due to a lack of profitability (where revenues exceed expenses by less than 10%), the General Manager will recommend to the Commission for approval Hardship Application and reduction in rent.
- 4) Other Supporting Documents The Concessionaire applying for Tier Two hardship rent shall timely make available all records and documents requested by the City Controller. Some of the records that might be requested by the City Controller include, but are not limited to, sales tax reported to the state, any bank records into which deposits or withdrawals are made relating to the concession, disbursements, including invoices or receipts for all expenses, totaling receipts from receipt books and/or cash register tapes and tracing to deposit records and bank statements, certified daily ledgers maintained by a Concessionaire of cash or other receipts and/or paid expenses.

SEND YOUR COMPLETED CERTIFICATION OF FINANCIAL HARDSHIP TO: Robert Andrade, General Manager El Pueblo de Los Angeles Historical Monument 125 Paseo de la Plaza, Suite 400 Los Angeles, CA 90012 Form Gen. 146 (Rev 3/09)

EXHIBIT H: INSURANCE REQUIREMENTS for Contractors, Vendors, Lessees, and Permittees doing business with the City of Los Angeles

	ce equals or exceeds the CSL amount.	, <u>Limits</u>
<u>X</u>	Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL) W EL	
	Waiver of Subrogation in favor of City	
Χ	General Liability	<u>\$ 1,</u> 000,00
	☑ Products/Completed Operations ☑ Sexual Misconduct ☑ Premises and Operations ☐ Collapse & Underground ☑ Contractual Liability ☑ Fire Legal Liability _ \$100,000 ☑ with 180 days rental interruption ☑ Independent Contractors	
X	Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	\$ 1,000,0
X	Professional Liability (Errors and Omissions) Discovery PeriodTwelve (12) months from completion of work or termination of contract	<u>\$</u> 1,000,00
<u>x</u>	. Property Insurance (to cover replacement cost of building – as determined by insurance company)	\$ Replacement 0
uranc	☑ All Risk Coverage ☐ Boiler and Machinery ☐ Flood ☑ Builder's RiskFull value of constru☐ Earthquake	uction costs
	llution Liability	<u>\$</u> 1,000 <u>.</u> 00
	urety Bonds – from construction contractor for full value of the project	100% of contra
(

Rev. 10/09

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker.)

- 1. Agreement/Reference All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the types of coverage and minimum dollar amounts specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.
- 2. When to submit Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For As-needed Contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
- 3. Acceptable Evidence and Approval Electronic submission is the preferred method of submitting your documents. Track4LATM is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format Track4LATM advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access Track4LATM at http://track4la.lacity.org and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted. All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable Alternatives to Acord Certificates and other Insurance Certificates:

- A copy of the full insurance policy which contains a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the CITY.
- Binders and Cover Notes are also acceptable as interim evidence for up to 90 days from date of approval.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Completed Insurance Industry Certificates other than ACORD 25 Certificates can be sent electronically (CAO.insurance.bonds@lacity.org) or faxed to the Office of the City Administrative Officer, Risk Management (213) 978-7616. Please note that submissions other than through

Track4LA[™] will delay the insurance approval process as documents will have to be manually processed.

Verification of approved insurance and bonds may be obtained by checking Track4LA™, the CITY's online insurance compliance system, at http://track4la.lacity.org.

- 4. Renewal When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate through Track4LATM at http://track4la.lacity.org or submit an !nsurance Industry Certificate or a renewal endorsement as outlined in Section 3 above. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.
- 5. Alternative Programs/Self-Insurance Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (http://cao.lacity.org/risk/InsuranceForms.htm) to the Office of the City Administrative Officer, Risk Management for consideration.
- 6. General Liability insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. Sexual Misconduct coverage is a required coverage when the work performed involves minors. Fire Legal Liability is required for persons occupying a portion of CITY premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.)
- 7. Automobile Liability insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises, it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.
- 8. Errors and Omissions coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
- 9. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (http://cao.lacity.org/risk/InsuranceForms.htm). A Waiver of Subrogation on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.
- 10. Property Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. Builder's Risk/Course of Construction is required during construction projects and should include building materials in transit and stored at the project site.
- 11. Surety coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Crime Policy may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at http://cao.lacity.org/risk/BondAssistanceProgram.pdf or call (213) 258-3000 for more information.

EXHIBIT I STATE DEED

When Recorded Mail To: 2 State Department of Parks and Recreation. P. O. Box 942896 3 Sacramento, CA 94296-0001 4 Attn: Betty Paris, Acquisition Division 5 Space above for Recorder's Use STATE OF CALIFORNIA 6 7 OUITCLAIM DEED 8 Pursuant to the provisions of Chapter 1358, Statutes of 1987, the 9 STATE OF CALIFORNIA, acting through its Director of General Services, hereby 10 quitclaims to CITY OF LOS ANGELES, all its right, title and interest in and to 11 the real property described in Exhibit A hereto, which Exhibit is incorporated 12 herein by this reference, in the County of Los Angeles, State of California. 13 14 EXCEPTING AND RESERVING to the State of California all mineral deposits as defined in Section 6407 of the Public Resources Code below a depth 15 16 of 500 feet, without surface rights of entry. W 1 17 18 This deed is subject to the following express conditions subsequent: 19 20 The property shall be known as El Pueblo de Los Angeles 1. 21 Historic Monument and shall be used as a public park or monument. 22 23 2. The development and operation shall conform to the General Plan

for El Pueblo de Los Angeles State Historic Park adopted April 11, 1980

pursuant to Section 5002.2 of the Public Resources Code. The Plan may be amended by the CITY in accordance with procedures for amendment set forth in Article 8 (commencing with Section 65450) and Article 9 (commencing with Form and Purpose

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Checked by Milled Date III S 1990 Section 6500) of Chapter 3 of Division 1 of Title 7 of the Government Code. The CITY shall consider the development criteria of Section 5019.59 of the Public Resources Code.

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3. The City of Los Angeles shall operate, improve, maintain, construct, remodel, and perform any and all necessary activities at the Historic Monument in compliance with the U.S. Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic

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Structures".

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11 The State of California shall be allowed, at the STATE'S 12 option, free occupancy of the existing STATE offices on the entire first and 13

second floors of the Hellman Quan Building, located at 128 Paseo De La Plaza, 14 Los Angeles, California (See Exhibit B, Sheet 1) incorporated herein by this

reference, with the exception of the CITY Archives Room on the second floor

(See Exhibit B, Sheet 2) together with four existing parking spaces located

along Sanchez Street. Upon termination of parking along Sanchez Street, the

CITY will provide four new parking spaces to be identified within future

parking Lot No. 2 located on the corner of Main Street and Macy Street.

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Should any of said express conditions be violated, the State of California shall have the right to reenter and take possession of the real property and upon such re-entry title thereto shall revert to the STATE.

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1.	IN WITNESS WHEREOF, The STATE has caused this Quitclaim Deed to be
2	executed this 27th day of October, 1988.
3	
4	STATE OF CALIFORNIA
5	DEPARTMENT OF GENERAL SERVICES W. J. ANTHONY, DIRECTOR
6	
7	
8	PAUL V. SAVONA, Chief
9	Office of Real Estate and Design Services
10	APPROVED:
11	DEPARTMENT OF PARKS AND RECREATION
12	By Lee Me Cargo
13	By Jac Milargo
14	
15	Attachment
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17	
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COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8-72)

•	
•	STATE OF CALIFORNIA
	COUNTY OF SACRAMENTO SS.
	On this <u>lst</u> day of November , 19 88, before me, the undersigned, a Notary Public in and for the State of California, personally appeared PAUL V. SAVONA personally known to be or proved to me on
	the basis of satisfactory evidence to be the person who executed this instrument asChief of the Office of Real Estate and Design Services. Department of General Services of the State of California, and acknowledged to me that the State of California executed it.
	WITNESS my hand and official seal.
	OFFICIAL SEAL EUNICE I. MATLOCK BOTARY PUBLIC - CALIFORNIA SACRAMENTO COUNTY My Comm Expires July 12, 1991 My Comm Expires July 12, 1991
	STATE OF CALIFORNIA) ss. COUNTY OF SACRAMENTO) On this 27 day of

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in sal county, the day and year first written above.

Notary Public

OFFICIAL SEAL
SUSAN P. HARRINGTON
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
My Comm. Expires Sept. 25, 1990

3 All that real property situate in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

PARCEL 1

All those lands conveyed to the State of California by the McLaughlin Corporation by Corporation Grant Deed dated July 17, 1953 and recorded December 29, 1953 in Book 43478 at Page 430, Official Records of said County.

PARCEL 2

All those lands conveyed to the State of California by the Union Bank and Trust Company of Los Angeles, as Executor of the Estate of Constance D. Simpson, also known as Constance Doria Simpson, deceased, by Deed dated September 17, 1953 and recorded December 29, 1953 in Book 43481 at Page 359, Official Records of said County, and by Irving M. Walker, as Trustee, under the Will of Doria C. Lankershim, by Quitclaim Deed dated March 5, 1963 and recorded May 27, 1963 in Book D2043 at Page 496, Official Records of said County.

PARCEL 3

All those lands conveyed to the State of California by James A. Rimpau, Trustee, by Deed dated July 14, 1953 and recorded December 31, 1953 in Book 43498 at Page 295, Official Records of said County.

All those lands conveyed to the State of California by Los Nietos, Company, a corporation, by Deed dated August 4, 1953 and recorded December 31, 1953 in Book 43498 at Page 287, Official Records of said County and by Final Order of Condemnation dated March 2, 1961 and recorded March 3, 1961 as Document No. 4201 in Book D1143 at Page 905, Official Records of said County.

PARCEL 5

All those lands conveyed to the State of California by Mae N. Lombardi, et al. by Deed dated November 4, 1953 and recorded February 1, 1954 in Book 43717 at Page 437, Official Records of said County.

PARCEL 6

All those lands conveyed to the State of California by Quon How Shing by Deed dated August 28, 1953 and recorded February 26, 1954 in Book 43939 at Page 247, Official Records of said County.

PARCEL 7

All those lands conveyed to the State of California by Audette Marie Garnier and Yvonne Garnier by Deed dated January 11, 1954 and recorded April 22, 1954 in Book 44389 at Page 74, Official Records of said County.

PARCEL 8

All those lands conveyed to the State of California by Stella Anne Valla Hamilton, et al. by Deed dated November 2, 1953 and recorded April 30, 1954 in Book 44460 at Page 218, Official Records of said County and by Final Order of Condemnation dated February 21, 1958 and recorded February 27, 1958 as

Document No. 3409 in Book D27 at Page 369, Official Records of said County.

9 PARCEL 9

All those lands conveyed to the State of California by G. Pagliano and Dora C. Pagliano by Deed dated September 4, 1953 and recorded June 4, 1954 in Book 44735 at Page 317, Official Records of said County, and by Anita Brodrick, et al. by Quitclaim Deed dated April 21, 1958 and recorded September 18, 1958 in Book D220 at Page 181, Official Records of said County.

All those lands conveyed to the State of California by Paul Mance and Amalia

Mance by Deed dated June 3, 1954 and recorded December 21, 1954 in Book 46434

at Page 81, Official Records of said County.

17 PARCEL 10

PARCEL 11

All those lands conveyed to the State of California by Title Insurance and Trust Company by Grant Deed dated March 13, 1956 and recorded September 28, 1956 in Book 52429 at Page 437, Official Records of said County.

COURT PAPER STATE OF CALIFORNIA STO. 113 IREV. 8-721

COURT PAPER STATE OF CALIFORNIA

26

COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8.72)

1 I PARCEL 20

All those lands conveyed to the State of California by Louis Foix, et al. by

Deed dated May 14, 1959 and recorded August 17, 1959 in Book D573 at Page 537,

Official Records of said County.

PARCEL 21

All those lands conveyed to the State of California by Rose Segale by Deed

dated June 16, 1959 and recorded September 24, 1959 in Book D612 at Page 293,

Official Records of said County.

PARCEL 22

All those lands conveyed to the State of California by the City of Los Angeles by Grant Deed dated April 17, 1959 and recorded September 22, 1959 in Book D609 at Page 712, Official Records of said County and by Quitclaim Deed dated January 26, 1961 and recorded April 15, 1961 in Book D117B at page 907, Official Records of said County.

PARCEL 23

All right, title and interest to Sanchez Street between Arcadia Street and Plaza Street and to Plaza Street between Main Street and Los Angeles Street which the State of California may have acquired from Isabel J. Sepulveda Lugo, et al. by unrecorded Quitclaim Deed dated October 10, 1954.

PARCEL 24

All those lands conveyed to the State of California by the Los Angeles

Metropolitan Transit Authority by Grant Deed dated July 30, 1964 and recorded

October 1, 1964 in Book D2647 at Page 939, Official Records of said County,

and by Los Angeles Transit Lines by Quitclaim Deed dated June 1, 1955 and

recorded October 21, 1955 in Book 49303, at Page 341, Official Records of said

8 | County.

0-1545Q °

	28001-514
R/W	No

State of California

The City of Los Angeles

JOB TITLE Acquisition of El Pueblo de Los Angeles Historic Monument

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to The City of Los Angeles, a municipal corporation, is hereby accepted under the authority of the City Council of The City of Los Angeles, pursuant to Ordinance No. 123655, approved January 23, 1963, and the grantee consents to the recordation thereof by its duly authorized officer. officer.

By_

WHITE ON THIS SIDE OF LIKE. LEAVE FOR

HOZ

Authorized Officer

TITLE OFFICER

NOT A STANDARD INSTRUMENT Checked as to parties, marital status, dates, natures, acknowledgments and corporate s

> Engineering Bureau of RYAKWAY XXX LAN

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TITLE	OFF	したべ

Title Officer.

Approved as to Authority FEB 8
Engineering

Bureau of RYAY XXVII XXXXII XXXII

Principal Real Estate Agent.

Approved as to descriptions_

RCBERT S. HORII City Engineer.

Approved as to form

JAMES K. HAHN

Deputy.

Deputy.

132AZI3.

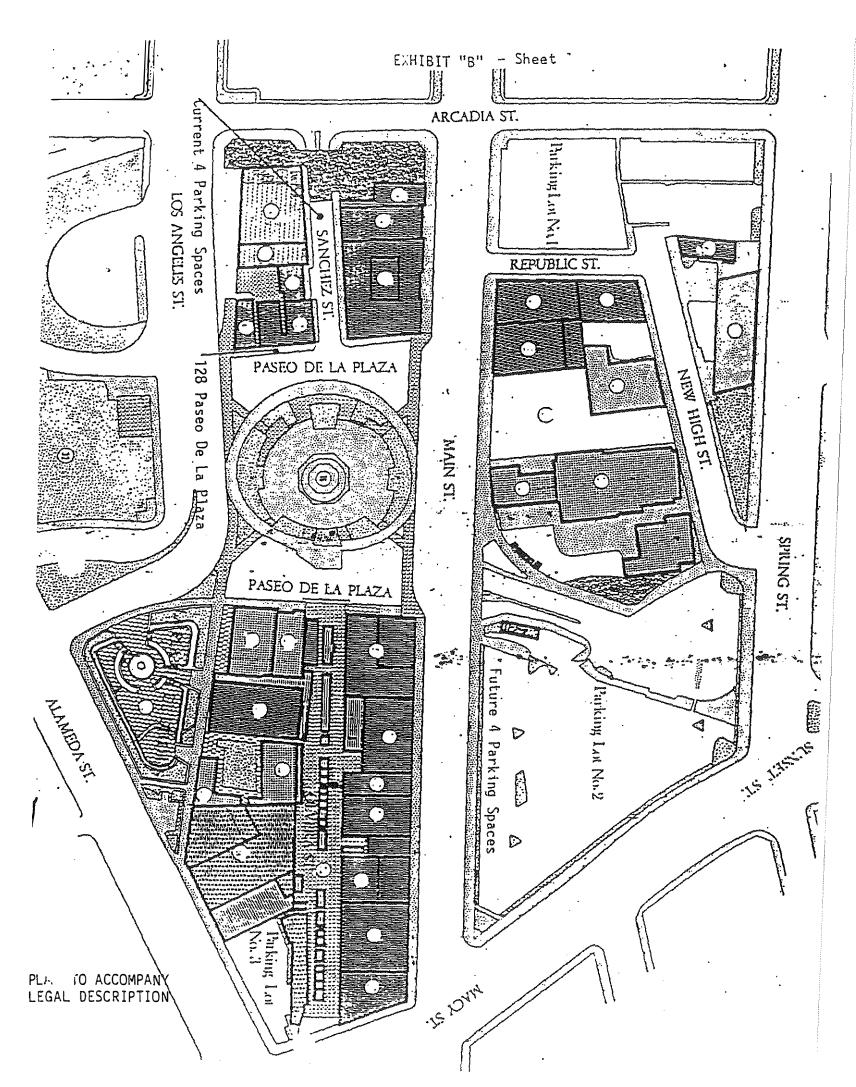
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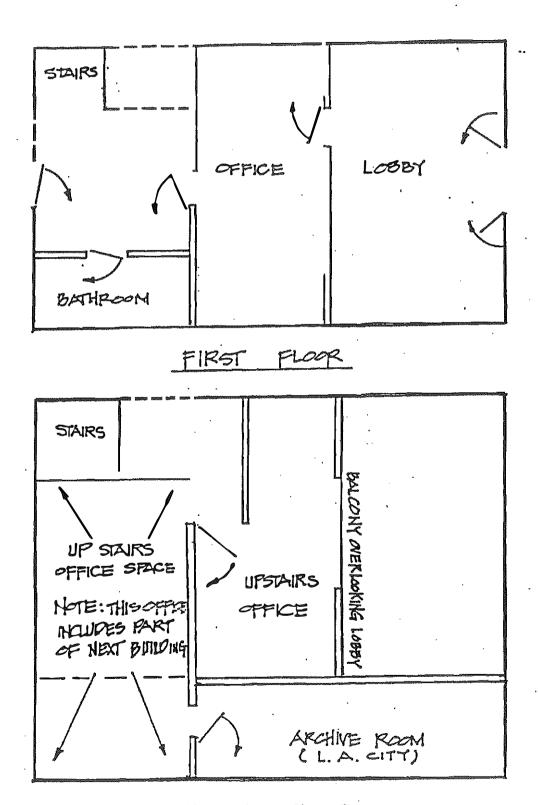
When Recorded Return to Director

Bureau of Right Way and Land DEPARTMENT OF PUBLIC WORKS

City of Los Angeles

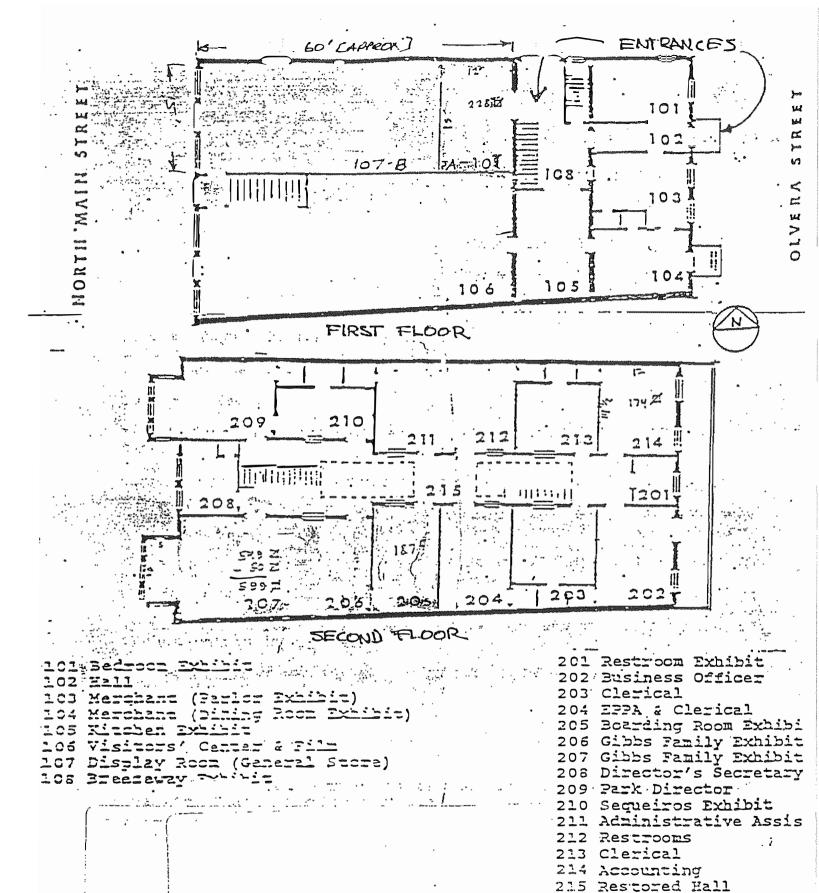
132A215. Platted. Conditions Signature.





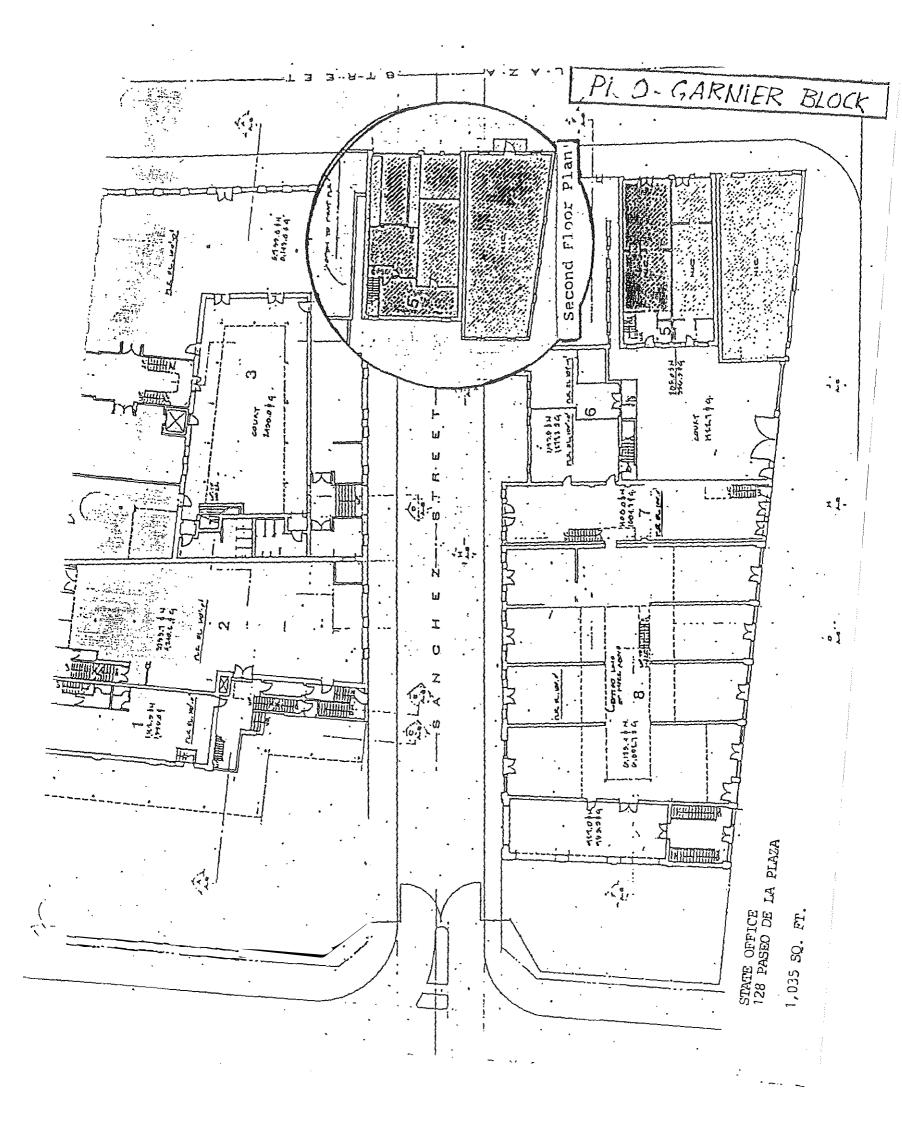
SECOND FLOOR

FLOOR PLAN TO ACCOMPANY LEGAL DESCRIPTION 128 Paseo De La Plaz Los Angeles, California



CITY OFFICES
OLVERA STREET

1,000 SQ. FT. (APPROX.)



STANDARD PROVISIONS FOR CITY CONTRACTS EXHIBIT J

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one CONTRACTOR herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the CITY'S option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. TIME OF EFFECTIVENESS

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;

- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the CITY by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. WAIVER

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A

party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONTRACTOR thirty days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to affect such termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

- 1. Except for excusable delays as provided in PSC-7, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
- 2. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- 3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 4. In the event the CITY terminates this Contract as provided in this section, the CITY may procure, upon such terms and in such manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be

- liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.
- 5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
- 7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the **CITY**.

PSC-12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. The CITY shall have the right to review and approve any personnel who are assigned to work under this Contract. CONTRACTOR agrees to remove personnel from performing work under this Contract if requested to do so by the CITY.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to approve CONTRACTOR'S subcontractors, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONTRACTOR'S subcontractors, and nothing herein creates any privity between the CITY and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for CONTRACTOR'S performance hereunder and shall pay any fees required therefor. CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by CONTRACTOR hereunder), against CONTRACTOR'S rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, CONTRACTOR represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY'S Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, CONTRACTOR shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the CITY. These records shall be retained for a period of no less than three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Contract or within the three years following final payment made by the CITY

hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by CONTRACTOR or its subcontractors of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or

contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this Contract. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its subcontractors of any tier under this Contract, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by CONTRACTOR relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this

requirement or to obtain the compliance of its subcontractors with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

PSC-24. INSURANCE

During the term of this Contract and without limiting CONTRACTOR'S indemnification of the CITY, CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by CONTRACTOR, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to CITY requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject CONTRACTOR to the imposition of any

and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time

- A. During the performance of this Contract, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either

- of their request CONTRACTOR shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

- 3. Training and promotional opportunities; and
- 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S Contract with the CITY.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because

- of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.

- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONTRACTOR shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONTRACTOR must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONTRACTOR.
- M. The Affirmative Action Plan required to be submitted hereunder and the preregistration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

- 2. Classroom preparation for the job when not apprenticeable;
- 3. Pre-apprenticeship education and preparation;
- 4. Upgrading training and opportunities;
- 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
- 6. The entry of qualified women, minority and all other journeymen into the industry; and
- The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the CITY.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the Principal Owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONTRACTOR will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONTRACTOR to obtain compliance of its subcontractors shall constitute a default by CONTRACTOR under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
 - CONTRACTOR assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July

- 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
- 2. CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONTRACTOR shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall deliver the executed pledges from each such subcontractor to the CITY within ninety (90) days of the execution of the subcontract. CONTRACTOR'S delivery of executed pledges from each such subcontractor shall fully discharge the obligation of CONTRACTOR with respect to such pledges and fully discharge the obligation of CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
- 3. CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.
- 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.
- 5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that

such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due CONTRACTOR in accordance with the following procedures. Impoundment shall mean that from monies due CONTRACTOR, CITY may deduct the amount determined to be due and owing by CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY. CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and its implementing regulations. CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by CONTRACTOR, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONTRACTOR further agrees to: (1) notify the CITY within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this Contract;

(2) notify the CITY within thirty calendar days of all findings by a government agency or court of competent jurisdiction that CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH_PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. CONTRACTOR shall not change any of these designated subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If CONTRACTOR fails to comply with the EBO the CITY may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONTRACTOR has set up or used its contracting entity for the purpose of

evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

EXHIBIT K: MEMORANDUM OF CONCESSION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

CITY OF LOS ANGELES
EL PUEBLO DE LOS ANGELES HISTORICAL
MONUMENT AUTHORITY COMMISSION
c/o Office of the City Attorney
Carmen A. Trutanich, City Attorney
Real Property/Environment Division
200 North Main Street, Room 701 City Hall East
Los Angeles, California 90012-4870

Free recording in accordance with California Government Code section 6103

MEMORANDUM OF CONCESSION AGREEMENT

THIS MEMORANDUM OF CONCESSION AGREEMENT ("Memorandum") is made as of the date of attestation by the City Clerk of the City of Los Angeles of page 2 of this Memorandum, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION, as Landlord ("City") and agree as follows:

1. Term And Premises.

City leases to Concessionaire, and Concessionaire leases from City, the real property located in the City of Los Angeles, County of Los Angeles, State of California, described as:

That certain premises (hereinafter "Premises") situated in the City of Los Angeles, County

of Los Angeles, State of California, and identified as [Space-number______] as described in Exhibit A, commonly known as (Space Number_______), Olvera Street, Los Angeles, California 90012, for a term of Twenty (20) years, commencing upon attestation by the City Clerk, on the provisions of the Concession Agreement between the parties, which Concession Agreement ("Concession Agreement") is dated on the same date as this Memorandum. These provisions are incorporated into this Memorandum by reference.

2. Provisions Binding On Concessionaire.

The provisions of the Concession Agreement to be performed by Concessionaire, whether affirmative or negative in nature, are intended to and shall bind Concessionaire and its successors and assigns at any time, and shall inure to the benefit of City and its successors and assigns.

3. **Provisions Binding on City.**

The provisions of the Concession Agreement to be performed by City, whether affirmative or negative in nature, are intended to and shall bind City and its successors and assigns at any time, and shall inure to the benefit of Concessionaire and its successors and assigns.

4. Purpose of Memorandum.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the Concession Agreement.

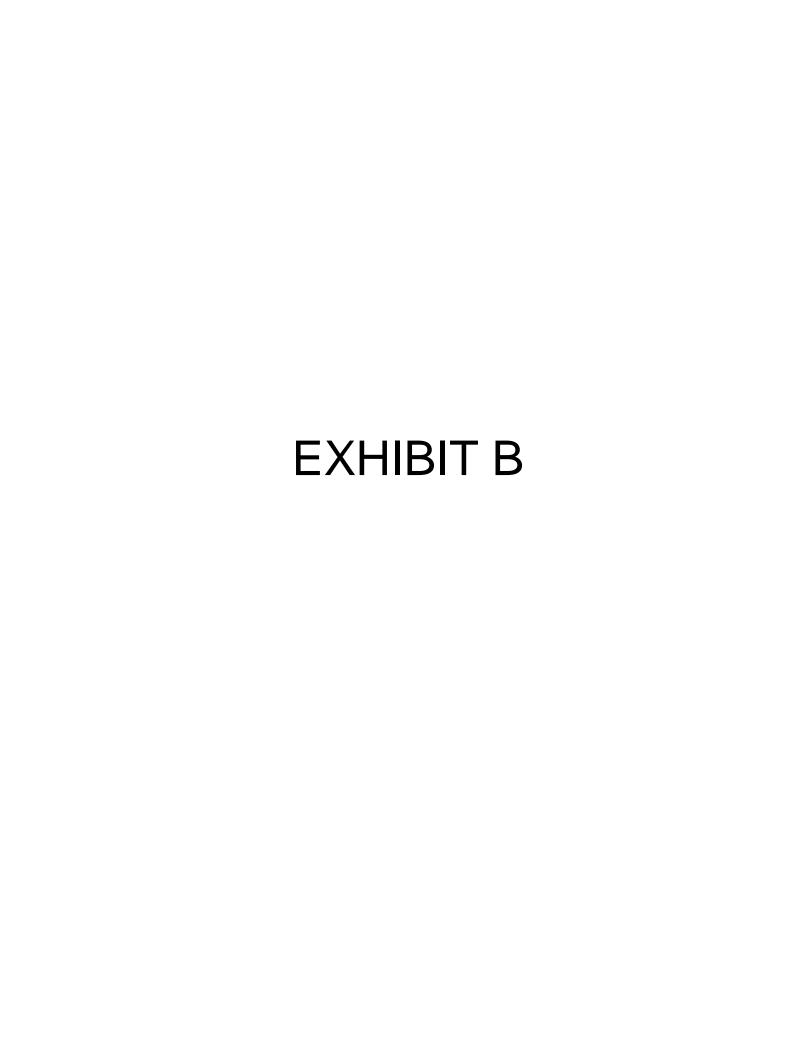
MEMORANDUM OF CONCESSION AGREEMENT

5. Reference to Concession Agreement for All Purposes.

Reference is hereby made to the entire Concession Agreement for any and all purposes. A true copy of the Concession Agreement is on file with the City Clerk of the City of Los Angeles, whose office is Room 360, City Hall, 200 North Spring Street, Los Angeles, California 90012.APPROVED AS TO FORM: CARMEN A. TRUTANICH, City Attorney	CITY: CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION By:
SPECIMEN — DO NOT SIGN By:	ROBERT ANDRADE General Manager
	DATE:
Deputy City Attorney	
DATE:	Ву:
ODEOMEN DO NOT CION	
SPECIMEN — DO NOT SIGN	DATE:
ATTEST: JUNE LAGMAY, City Clerk	
Ву:	
Deputy	
DATE:	

State of California)			
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State of California County of Los Angeles)) ss.)			
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l certify under PE foregoing paragraph is tr		under the law	vs of the State of Califo	rnia that the
WITNESS my han	d and official seal.			
Signature		(seal)		

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SECTION HE CONTRA		
Name of Contractor: Olivera Street Existing had		
Designated Contractor Contact Person: VIVICO PO	<u>いての</u> Email:	
Street Address: W-17A OVEYO STYC. City: Los Angeles State: Ca. Zip: 90012		IN)#: 95-09/5070
SECTION III EXEMP		
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Section IV.		
Description		
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SECTION IV. EXPLANATION Please provide a detailed explanation of why this contract should		A CONTRACTOR OF THE PROPERTY O
necessary, then continue to Section V. You may also attach an		
require additional documentation to supplement this form.		
The City's desire to continue the historic fabric of Olve		
lorig term leases with the "single source" existing mer		submit this exemption request
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receipt of a request for exemption and all supporting documental	tion.	
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Department Contact Signature	Date /	
An approved exemption is valid only for the contract for which it contractor may have with the City.	was requešted. It is not va	alid for any other contracts the
SECTION VI BCA	INFORMATION	
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APPROVED based on Code Sections: LAAC Section		E SOUNG & CHARTER SECTION 370
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	10-2U-11	
OCC Analyst Storature / / / / / / / / / / / / / / / / / / /	Date	}



OLVERA STREET MERCHANT CONCESSION AGREEMENT

BETWEEN CITY OF LOS ANGELES AND La Colondring Colo, Inc. L. D. LOS ANGELES, CALIFORNIA 90012

ARTICLE 1. BASIC PROVISIONS

1.1. Date and Parties. This Concession Agreement ("Agreement") is between City of	
Los Angeles, as Owner Owner ("City") and	
TO CONTORIO II a Ca (F. fine.	3 7 10
as Merchant ("Merchant"). Merchant is doing business as La Golondling Call, Inc.	6-111
[dba-name], with principal offices at \(\sqrt{146}	
[Merchant's address]. City is a municipal corporation, organized under the laws of the State of	
California. Except as specified in Section 1.8 below, for purposes of this Concession	
Agreement and the approvals required hereunder, the City acts through its El Pueblo de Los	
Angeles Historical Monument Authority Commission ("Commission"), 125 Paseo de la Plaza,	
Suite 300, Los Angeles, California 90012, or any lawfully designated successor entity.	
1.2. Premises. That certain premises (hereinafter "Premises") situated in the City of	
Los Angeles County of Los Angeles State of California and identified as ISpace	

- **1.3. Term.** Twenty (20) years ("**Term**") commencing on the Execution Date. (see Section 5.1, page 8, for further provisions). Subject to the conditions of Section 23.18 of this Concession Agreement, Merchant shall also have one (1) twenty-year (20-year) option to extend the Term of the Concession Agreement.
- **1.4.** Rent as defined in this Concession Agreement ("Rent") is payable on the first (1st) day of each month.
- **1.5. Security Deposit.** ("**Security Deposit**"). (See *Section 10.1*, *page16*, for further provisions.) The Merchant shall pay to the City a security deposit equal to two month's rent, payable in equal installments over a period of twenty-four (24) months commencing on the Execution Date of the Concession Agreement.
 - **1.6.** Permitted Use. (see Section 4.1, page 4, and Exhibit E for further provisions).
- 1.7. Capacity of City as Owner. Except where clearly and expressly provided otherwise in this Concession Agreement, the capacity of the City in this Concession Agreement shall be as an owner only, and any obligations or restrictions imposed by this Concession Agreement on City shall be limited to that capacity and shall not relate to or otherwise affect any activity of the City of Los Angeles in its governmental capacity, including, but not limited to, enacting laws, inspecting structures, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the City of Los Angeles pursuant to federal, state, or local law.

- 1.8. City's Representative. The City's El Pueblo de Los Angeles Historical Monument Authority Department ("El Pueblo Department"), or any lawfully designated successor, shall be City's representative with respect to all matters pertaining to this Concession Agreement except that approval of this Concession Agreement and approval of any revision or modification to this Concession Agreement must comply with Los Angeles Charter Section 370 and Los Angeles Administrative Code Section 10.5 (as amended from time to time), including but not limited to approval by the Los Angeles City Council for the Concession Agreement and any applicable Concession Agreement revisions or modifications. Said approval may be granted or withheld in the City's sole discretion (Section 26.18). The Los Angeles City Attorney must approve the Concession Agreement as to form. The defined term "General Manager" shall mean the General Manager of the El Pueblo Department, or such successor position as the City Council of the City of Los Angeles may designate. The defined term shall also include any person designated by the General Manager to act on behalf of the General Manager, either generally or for specified activities under this Concession Agreement. The defined term "Property Manager" shall mean the person designated by the General Manager to act on behalf of City in matters described in this Concession Agreement or in the Exhibits to this Concession Agreement. Merchant shall be notified in writing of such designation and the specific authority granted to any designee.
- Merchant Primary Merchant Designation. In the event that Merchant as defined in Section 1.1 of this Concession Agreement includes or is a legal entity (including but not limited to, any corporation, limited liability company, partnership, or trust) or multiple individuals, or is amended to include more than one (1) single individual or legal entity, Merchant hereby designates as the Primary Merchant ("Primary Merchant") under this Concession Agreement the individual known as MIVIER BMD > 1) . Acts and omissions of the Primary Merchant will be deemed to occur with the advance knowledge and consent of all of the individuals or legal entities comprising the Merchant, inure to the benefit of the Merchant and be the responsibility of the Merchant. Acts and omissions by the Primary Merchant are deemed to be the acts and omissions of each and all persons and entities comprising the Merchant. The Primary Merchant may designate a Contact Person ("Contact Person"). City may treat the Contact Person as the Merchant for administration of the Concession Agreement rights and obligations, including providing notice under the Concession Agreement. Each separate, individual or legal entity comprising Merchant under this Concession Agreement agrees to hold the City harmless from any and all costs and expenses of any nature rising out of any act or omission of the Primary Merchant and the City's conduct arising from the acts and omissions of Primary Merchant. References in this Concession Agreement to Merchant are deemed to include references to Primary Merchant.
 - **1.9.1. Joint and Several Obligations**. Notwithstanding the provisions of Section 1.9, above, each individual or legal entity comprising Merchant shall be jointly and severally liable for the obligations, acts and omissions of each and every individual or legal entity comprising Merchant and the agents, employees, independent contractors, licensees, as well as to all persons and entities claiming through any of these persons or entities.
- **1.10. Prior Concession Agreement**. Merchant is a party to a prior agreement between City and Merchant. This Concession Agreement replaces any such prior agreement and any contract oral or written relating to the Premises and the rights and benefits thereunder are hereby terminated.
- **1.11. Execution Date**. The defined term "**Execution Date**" shall mean the date the Office of the City Clerk of Los Angeles attests this Concession Agreement.

ARTICLE 2. NOTICES

- **2.1. Notices.** All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States registered or certified mail, postage prepaid, return receipt requested, or transmitted by telecopier (e.g., fax), followed by hard copy sent by United States regular mail, in which case the receiving party shall immediately confirm receipt of such notice. All notices are effective upon receipt. The Premises' address of when the parties are set forth in Section 2.2 below. Either party may from time to time designate another person or place as the party's designee for notice purposes, provided that the notice of change in designee complies with the notice provisions of Section 2.1.
- **2.2. Notices Where Sent.** All notices given under this Concession Agreement which are mailed or telecopied shall be addressed to the respective parties as follows:

To City

City of Los Angeles
El Pueblo de Los Angeles Historical Monument
Authority Department
125 Paseo de la Plaza, Suite 300
Los Angeles, California 90012
Telecopier: 213-485-8238

To Merchant

Notice-address

Telecopier:

ARTICLE 3. PREMISES

W-17 DIVERAST. Los Angeles, CA 90012

- **3.1. Rental of Premises**. The City rents to Merchant the Premises described in Section 1.2 of this Concession Agreement.
- 3.2. Acceptance of Premises. Merchant shall take the Premises in an "as is" condition as of the Concession Agreement Execution Date. Subject to the City's obligations, if any, in Sections 16.2, 18.1 and 18.3, with respect to the Monument Systems. City is not responsible for any build-out or other preparation of the Premises for occupancy by Merchant. Merchant agrees to perform all work necessary to prepare said space for occupancy at Merchant's sole cost and expense. Merchant waives the right to make repairs at the expense of City. Merchant waives the benefit of the provisions of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. It shall be Merchant's obligation, at Merchant's sole cost and expense, to install any and all fixtures, equipment, supplies or other material necessary to open for and thereafter conduct business. Any painting or other redecoration which Merchant desires shall also be done at Merchant's sole cost and expense.

City and Merchant acknowledge that City has acquired Premises by a quit-claim deed executed by the State of California on October 27, 1988, a copy of which is attached as Exhibit I.

3.3. Definition of GCARA. Gross Concession Agreement Rented Area (hereinafter known as "GCARA") means, with respect to the Premises and all other rentable areas, the

number of gross square feet of floor area for the exclusive use by the occupant thereof (whether present or future) and its customers, excluding Monument maintenance storage areas and basement spaces. Said area shall be measured from the exterior face of exterior walls and the exterior face of service corridor walls, the line along the front of the Premises where the Premises abuts the Monument or sidewalk, and the center line of any wall the Premises shares with other premises of the Monument. No deduction from GCARA shall be made for columns, stairs, elevators or any interior construction or equipment.

This Concession Agreement reflects the rental rate applicable for the Premises (for example, retail, office, storage, etc.).

ARTICLE 4. MERCHANT'S CONDUCT OF BUSINESS

- Use. Merchant shall use the Premises solely for the purposes specified in Exhibit E. 4.1. Merchant shall not use or permit the Premises to be used for any other purpose without City's prior written consent, which may be granted or withheld in the City's sole discretion. Merchant shall not use or occupy the Premises in violation of law and shall discontinue any use of the Premises which is declared by any governmental authority to be a violation of law. Merchant, at Merchant's sole cost and expense, shall comply with any directive of any governmental or municipal authority which imposes any duty upon Merchant or City with respect to the Premises or the use or occupation thereof, which arises due to the nature of Merchant's use or occupancy of the Premises. Notwithstanding the foregoing, Merchant shall not be responsible for compliance with directives which are the responsibility of City as provided in this Concession Agreement. Merchant shall not commit, or suffer to be committed, any waste or nuisance in its occupancy of the Premises. Merchant shall not commit, or suffer to be committed, or any act which may increase the cost of public liability or any other insurance City elects to carry in connection with the ownership, management, maintenance and operation of the Premises or which is otherwise in contravention of insurance underwriting regulations, guidelines and practices in use by City, as amended Merchant shall not, without the consent of the City, suggest or use the name "El Pueblo de Los Angeles" or "Olvera Street" for any purpose other than as an address of the business to be conducted by Merchant in the Premises. Merchant shall not do or permit the doing of anything in connection with Merchant's business or advertising which, in the reasonable judgment of the City, may confuse or mislead the public as to any relationship between City and Merchant. Merchant shall not leave the Premises unoccupied or vacant during its tenancy except prior to receipt of a certificate of occupancy. Merchant further covenants and agrees to continuously operate its business in compliance with all applicable federal, state, and local environmental statutes, rules and regulations including but not limited to the Rules and Regulations established by City and contained in Exhibit C of this Concession Agreement. Said Rules and Regulations may be modified by City, acting through its Commission, upon thirty (30) days' notice. Merchant shall indemnify and hold City harmless from any and all costs and expenses of any nature rising out of any claim or proceeding, administrative or otherwise, with respect to the Rules and Regulations.
- 4.2. Hours of Retail Business; Continuous Operation. Merchant shall maintain the minimum hours of operation and be open for business at the times of day as specified under the City's Rules and Regulations as contained in Exhibit C, and as may be amended by the Commission from time to time. With respect to any business controlled by governmental regulations or labor union contracts in its hours of operation, the foregoing provisions shall be subject to the hours of operation so prescribed by such governmental regulations or labor union contracts. Merchant shall operate and conduct its operations without interruption in a diligent and efficient manner except while the Premises are not able to be occupied by reason of casualty. Merchant's business shall be adequately and competently staffed to operate in accordance with the Rules and Regulations contained in Exhibit C. Any cessation of business activity not consistent with the Rules and Regulations, regardless of the ongoing payment of Rent, shall be considered a material breach of this Concession Agreement.

- **4.3. Personal Attention by Merchant.** Although Merchant may hire employees, personal attention in the management and operation of the business on the Premises is mandatory. Each individual Merchant named as a party in the Concession Agreement, or if Merchant is an entity then the Majority Owner, shall devote substantial and on-going personal on-Premises attention to the operation of the business. Failure of the Merchant or Majority Owner to devote such personal attention shall constitute a material breach of this Concession Agreement.
- **4.4.** Rules And Regulations. Merchant and Merchant's employees and invitees shall comply with and observe faithfully the rules and regulations governing the Premises ("Rules and Regulations") and the Monument, as the Rules and Regulations are set forth in this Concession Agreement as Exhibit C, as such Rules and Regulations may be modified from time to time by City acting through its Commission. In the event of a conflict between the provisions of this Concession Agreement, as amended, and the Rules and Regulations, the provisions of this Concession Agreement shall govern.
- 4.5. Signs, Logos, and Marks. Merchant agrees that Merchant will not use any of the City's seals, names, logos, insignias or marks without the prior written consent of City. Use of the City seal requires explicit approval by the City Council. This section does not apply to seals, names, logos, insignias or marks that must be displayed pursuant to any duty imposed on Merchant. Merchant further agrees that Merchant will not act in any way or manner to impart official endorsement by the City of Merchant's merchandise or business. Merchant shall not, without the consent of the City, use the name "El Pueblo de Los Angeles" or "Olvera Street" or similar names (collectively as "El Pueblo Brand Names") for any purpose other than as an address of the business to be conducted by Merchant in the Premises, nor shall Merchant do or permit the doing of anything in connection with Merchant's business or advertising which, in the reasonable judgment of the City, may confuse or mislead the public as to any relationship between City and Merchant in the use of the Premises. Merchant further agrees that Merchant will not act in any way or manner to suggest or impart official endorsement by the City of Merchant's merchandise or business.
 - **4.5.1.** Shall Merchant desire to obtain trademark license to use any of the City's trademarks, including El Pueblo Brand Names, for any purpose, a separate trademark license with fair market royalties must be entered into with approval from appropriate City departments and/or City Council and approved by the City Attorney's Office. If requested by Merchant, City shall provide Merchant a royalty-free and paid-up trademark license for the use of the names "Olvera Street," "Placita Olvera,"or "Calle Olvera" in connection with Merchant's business operated in the Premises.
- Intellectual Property Rights. Merchants agree that any and all names, logos, trademarks and/or copyrights developed hereinafter which will in any way associate with, identify or implicate an affiliation with City or the El Pueblo Brand Names, shall be approved by City, shall belong to City upon creation or first use, and shall continue in City's exclusive ownership upon termination of this Concession Agreement. Further, any works developed pursuant to this Concession Agreement by Merchant, including all related copyrights and other proprietary rights therein, shall belong to City upon creation, and shall continue in City's exclusive ownership upon termination of this Concession Agreement. This shall include, but is not limited to, all construction drawings, designs, reports, specifications, notes and other work developed in the performance of this Concession Agreement. Further, Merchant shall deliver to the City, upon request, the disk or tape that contains the construction design files and shall specify the supplier of the software and hardware necessary to use the design files of any work that is performed with the assistance of Computer Aided Design and Drafting Technology. Merchant intends and hereby agrees to assign and transfer to City all right, title and interest in and to such intellectual property, including copyrights and other proprietary rights therein, unless otherwise agreed to in writing by City personnel with delegated authority or the City Council.
 - **4.6.1.** In the event that Merchant is required to convey to City tangible and intangible

deliverables, Merchant warrants that it has the full right, power and authority over and is the sole exclusive owner of all tangible and intangible property deliverable to City in connection with this Concession Agreement and that title to such materials conveyed to City shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances or security interests.

- **4.6.2.** Merchant agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights of third parties without first (i) obtaining City's prior written permission, and (ii) granting to or obtaining for City a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license, to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display and distribute, for any purpose and medium whatsoever, any such prior works.
- **4.6.3.** Merchant further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret or any other intellectual property rights of any person, entity or organization. Merchant agrees to promptly execute any documents reasonably requested by City in connection with securing City's registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Merchant further agrees to incorporate these provisions into all of its contracts with architects, engineers and other consultants or contractors.
- **4.6.4.** Merchant, at its sole expense, shall hold harmless protect, defend and indemnify City against any intellectual property infringement claim, demand, proceeding, action and/or dispute ("Action") brought by a third party in connection with any deliverable or Merchant's performance hereunder. Merchant shall pay all costs, expenses, losses and damages, judgments and claims including reasonable attorney's fees, expert witness fees and other costs. In Merchant's defense of the City, negotiation, compromise, and settlement of any such Action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.
- **4.6.5.** Rights and remedies available to the City hereinabove shall survive the expiration or other termination of this agreement. Further, the rights and remedies are cumulative of those provided for elsewhere in this Concession Agreement and those allowed under the laws of the United States, the State of California, and the City of Los Angeles.
- **4.6.6.** Merchant agrees that before commencement of any subcontract work it will incorporate all provisions on property ownership, including Section 4.5 through subsection 4.6.5, to contractually bind or otherwise oblige its subconsultants, personnel performing work such that the City's titles, rights, and interests in deliverables and all intellectual property related rights are preserved and protected as intended herein.
- **4.7. Waiver by Artists.** The installation of any artwork permanently or semi-permanently, such as murals, must comply with any applicable provisions of City's sign laws. After obtaining written approval from City to install and at least 30 business days prior to installing any such artwork, Merchant shall secure written waivers from all artists such that the artists waive any and all of their "adroit moral" including the "right to integrity in the artwork" (i.e., right to preserve the artwork unaltered or destroyed) and other similar rights including those under the Visual Artists Rights Act, 17 U.S.C. \$106A et seq. (including \$106A(a)(3)(A), \$106A(a)(3)(B) and \$113); and the California Art Preservation Act, California Civil Code \$987. Merchant shall file the written waivers with the City Attorney's Office for approval no later than 20 business days prior to the commencement of the installation of the artwork. Such installation shall not commence without written approval from the City Attorney's Office of the legal adequacy of the waivers.

- **4.8. Compliance With Laws.** In the use of the Premises, Merchant shall comply with all safety, health and policy regulations in all respects and at all times.
- **4.9.** Uses For Other Premises. Except as may be otherwise stated in Exhibit C of this Concession Agreement, City reserves the absolute right to rent or utilize other premises in the Monument as City shall determine to best promote the interests of the City of Los Angeles and the Monument, and no representations are made or intended as to the nature of the enterprise to be engaged in by any other merchant, or to preclude use of other premises for any other purpose by the City.
- **4.10. Vending Machines.** Mechanical, self operating or automatic vending machines, including but not limited to automated teller and cash dispensing machines, shall only be allowed in or operated in, on, or about the Premises consistent with the City's Rules and Regulations as contained in Exhibit C, and as may be amended from time to time.
- **4.11. Use Of Machine**ry. Merchant shall not use any machinery in the Premises which may cause vibration or tremor to the floors or walls, or which by its weight might injure the floors of the Premises or adjacent spaces.
- Hazardous Materials. Without limiting any of the obligations described above, Merchant shall not use or permit the Premises or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process hazardous materials without City's prior written consent, which may be denied at City's sole discretion, and even with City's written consent, only in compliance with all laws and regulations with respect to hazardous materials (The "Environmental Regulations") (including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (U.S.C., Title 42 \(\text{ 9}\) 9601, et seq) (together with the regulations promulgated thereunder. "CERCLA"), the Resource Conservation and Recovery Act, as amended (U.S.C., Title 42 9 6901, et seq) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-To-Know Act, as amended (together, with the regulations promulgated thereunder, "Title III") (42 U.S.C. → 11011, et seq.) and any so-called "Superfund" or "Superlien" law), nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any agent, employee, independent contractor, licensee, the storage, transportation, disposal or use of hazardous materials or the release or threat of release of hazardous materials on, from or beneath the Premises or onto any other property. Upon the occurrence of any such release or threat of release of hazardous materials, Merchant shall promptly notify City in writing. Merchant shall pay as Additional Rent City's costs for all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all hazardous materials so released, on, from or beneath the Premises or other property, in strict compliance with all Environmental Regulations.
- 4.13. Window Displays And Signs. Upon substantial completion of merchant improvements, Merchant shall proceed to install Merchant's exterior signage (which shall be installed no later than the date that rent starts to accrue). All Merchant's signage shall be in compliance with all applicable laws, the Rules and Regulations, and any applicable sign criteria for the Monument as established by the City or its designee. Prior to installation of any sign, Merchant shall obtain written approval for the sign and its proposed location by the Monument General Manager. Merchant shall have the sole obligation to install and pay for Merchant's signage on the Premises. Merchant shall not install, display or maintain any off-site signs, digital signs or supergraphic signs. Except as approved in writing by City, no written or descriptive material of a permanent or nonpermanent nature, whether for advertising or any other purpose, shall be hung or affixed to the interior walls, ceilings, windows, and supports of the Premises or on the store front, windows or any other exterior surface or fixture of the Monument.

ARTICLE 5. TERM AND OCCUPANCY DATE

- **5.1.** Concession Agreement Term. The initial term of this Concession Agreement shall be for a period of twenty (20) years ("Term") and shall commence on the Execution Date ("Concession Agreement Commencement Date"), and shall terminate on the last of the month which is twenty (20) years after the month containing the Concession Agreement Commencement Date ("Concession Agreement Termination Date"), unless extended or terminated earlier pursuant to the provisions of this Concession Agreement.
- **5.2.** Concession Agreement Year Defined. The first "Concession Agreement Year" shall begin on the Concession Agreement Commencement Date and shall expire on the last day of the month, twelve (12) full calendar months next following said Concession Agreement Commencement Date. Subsequent Concession Agreement Years shall be each consecutive twelve (12) calendar month period thereafter.
- **5.3.** Holdover by Merchant. In the event that Merchant remains in possession of the Premises after the expiration of the Term, or any extensions or renewals thereof, with the implied or express consent of City, Merchant shall become a merchant from month to month at the Rent (as that term is defined in Article 6) payable during the last month of the Term of this Concession Agreement, subject to any automatic Rent escalations applicable during the last two years of the expiring Term, or any extensions or renewals thereof, and such tenancy shall continue until terminated by City or Merchant giving the other at least thirty (30) days prior written notice of the intention to terminate the tenancy. In all other respects, the tenancy shall be governed by the provisions of this Concession Agreement.
- **5.4. Surrender of Premises.** The voluntary or other surrender of this Concession Agreement by Merchant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, operate as an assignment to it of any or all transfers, assignments or subtenancies. No act or thing done by City or any agent or employee of City during the Term shall be deemed to constitute an acceptance by City of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by City. The delivery of keys to the Premises to City or any agent or employee of City shall not constitute a surrender of the Premises or effect a termination of this Concession Agreement, whether or not the keys are thereafter retained by City, and notwithstanding such delivery, Merchant shall be entitled to the return of such keys at any reasonable time upon request until this Concession Agreement shall have been properly terminated.
- 5.5. Condition of Surrendered Premises. Upon the expiration or termination of this Concession Agreement, Merchant shall peaceably surrender the Premises and all alterations and additions thereto, broom-clean, in good order, repair and condition, reasonable wear and tear excepted, and shall comply with all other provisions of this Concession Agreement and applicable law. Upon expiration or termination, Merchant shall, without expense to the City, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, freestanding cabinet work, and other articles of personal property owned by Merchant or installed or placed by Merchant at its expense in the Premises, and such similar articles of any other persons claiming under Merchant, as City may, in its sole discretion, require to be removed, and Merchant shall repair at its own expense all damage to the Premises and building(s) resulting from such removal.

ARTICLE 6. RENT

6.1. Rent. The word, "Rent" as used in the Concession Agreement, shall refer to the rent in the amounts set forth or provided for in this Concession Agreement to be paid to City at the place designated in Article 2.2 (page 3) or at such other place designated by City without, prior demand therefore, except for Additional Rent.

6.2. Rent Calculation. Rent shall be due as of November 1, 2010. A two-tiered rent structure shall be available to Merchant as provided in this Article. "Prior Rent" is the rental rate in effect immediately prior to the rent set by the Commission on April 1, 2010. Merchant's Prior Rent was \$ The Merchant's rent established by the Commission on April 1, 2010, was \$ 24,24, 66 ___. In no event shall Merchant pay rent less than Prior Rent. At the time of execution of this Concession Agreement, Merchant shall elect and select one of the three (3) rental rates set forth in the herein-below listed Tiers, namely, Tier One A, Tier One B or Tier Two. Tier One B rent is only available to the Merchant at the Commencement of the Concession Agreement and must be selected by the Merchant at the time of execution of the Concession Agreement. Tier One B rent also shall be available to an assignee who is an immediate family member as defined in Section 12.1.1.1, provided the assignment is made by the Merchant without an exchange of consideration (for example, Merchant receives no money or anything else of value from the assignee or anyone else) and provided that the assignee completes the form in Section 6.2.2.1. Tier Two hardship rent shall be available only to an assignee starting the sixth year after the assignment and only if the auditor determines assignee qualifies for Tier Two hardship rent. Merchant shall designate said election and selection by placing merchant's initials in the blank next to the listed Tier caption.

6.2.1. Tier One A (Market Rent; Broad Assignment Rights) []

- **6.2.1.1.** If Merchant does not operate a Puesto, Merchant shall receive, for the first six months after Concession Agreement Commencement Date, a 25% discount from the April 1, 2010 Commission-approved rate. For the second six months, Merchant shall receive a 20% discount from the April 1, 2010 Commission-approved rate. In no event shall Merchant pay less than the Prior Rent.
- **6.2.1.2**. If Merchant operates a Puesto on Olvera Street, the Puesto rental calculations shall be based on the following:
 - **6.2.1.2(a)**. For the first six months after Concession Agreement Commencement Date, a Puesto having square footage of 75 square feet, or more, shall receive a discount of 25% from the April 1, 2010 Commission-approved rate. For the second six months after Concession Agreement Commencement Date, such a Puesto shall receive a 20% discount from the April 1, 2010 Commission-approved rate.
 - **6.2.1.2(b).** For the first six months after Concession Agreement Commencement Date, a Puesto having square footage of less than 75 square feet shall receive a discount of 30% from the April 1, 2010 Commission-approved rate. For the second six months after Concession Agreement Commencement Date, such a Puesto shall receive a 25% discount from the April 1, 2010 Commission-approved rates.
- **6.2.1.3**. On the thirty-seventh month after Concession Agreement Commencement Date, and again on the forty-ninth month after the Concession Agreement Commencement Date, the above rental rates will be adjusted by the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics, with a cap on such CPI increase of 5% yearly.
- 6.2.2. Tier One B (Phase-In; Limited Assignment Rights)

- **6.2.2.1**. In order to receive Tier One B rent, Merchant shall complete and sign a form provided by the Department and contained in Exhibit G. Merchant shall submit it to the Department at the same time Merchant signs the Concession Agreement. The form shall state that Merchant would not be profitable as set-out in Sections 6.2.3.2 and 6.2.3.3 if Merchant paid Tier One A rent. In no event shall Merchant pay less than the Prior Rent.
- **6.2.2.2**. If Merchant does not operate a Puesto on Olvera Street, then Merchant shall pay Tier One B rent as follows:
 - **6.2.2.2(a)**. For the first twelve months after Concession Agreement Commencement Date: Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from the April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(c)**. For months 25 through 36 after Concession Agreement Commencement Date: 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.2(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.
- **6.2.2.3**. If Merchant operates a Puesto on Olvera Street having square footage of 75 square feet, or more, then Merchant shall pay Tier One B rent as follows:
 - **6.2.2.3(a)**. For the first twelve months after Concession Agreement Commencement Date: Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(c)**. For months 25 through 36 after Concession Agreement Commencement Date: 25% discount from April 1, 2010 Commission-approved rental rate.
 - **6.2.2.3(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.
- **6.2.2.4**. If Merchant operates a Puesto on Olvera Street having square footage of less than 75 square feet, then Merchant shall pay Tier One B rent as follows:

- **6.2.2.4(a).** For the first twelve months after Concession Agreement Commencement Date, Prior Rent plus one-third of the difference between Merchant's Prior Rent and the amount represented by a 30% discount from April 1, 2010 Commission-approved rental rates.
- **6.2.2.4(b)**. For months 13 through 24 after Concession Agreement Commencement Date: Prior Rent plus two-thirds of the difference between Merchant's Prior Rent and the amount represented by a 30% discount from April 1, 2010 Commission-approved rental rates.
- **6.2.2.4(c)**. For months 25 through 36 after Concession Agreement Commencement Date: 30% discount from April 1, 2010 Commission-approved rental rate.
- **6.2.2.4(d)**. For months 37 through 60 after Concession Agreement Commencement Date: rent adjusted by the Consumer Price Index formula in 6.2.1.3 of this Article.

6.2.3. Tier Two (Hardship Rent; Limited Assignment Rights) []:

- **6.2.3.1**. Tier Two rent is hardship rent which at the time of the Concession Agreement Commencement Date shall be the greater of 50% of the rental rates approved by the Commission on April 1, 2010 and the Prior Rent. Any time after the Concession Agreement Commencement Date, hardship rent shall be 50% of the rent in effect at the time of the Tier Two hardship application or hardship annual reapplication.
- **6.2.3.2.** In order to receive Tier Two rent, Merchant shall submit to an audit by the City Controller using the protocol and criteria described below in 6.2.3.3. The audit shall be completed in 30 days. The audit must confirm that if Merchant paid Tier One A rent, Merchant's concession would no longer be profitable as set-out in Section 6.2.3.3. Merchant shall submit to an audit by the Controller for each year that Merchant seeks to pay Tier Two rent. During the time period in which the Controller is conducting the audit, Merchant shall continue to pay Rent in the amount due at the time of the hardship application. After the fifth-year anniversary of the Concession Agreement, any Tier Two rent shall conform to the hardship rent policy approved by the Commission in existence at that time.
- **6.2.3.3**. The auditor shall be the City Controller and shall conduct an audit tailored to a cash business to assess profitability as a percentage of revenues over expenses, and, if not a cash business, using other relevant criteria. The audit shall determine the ability of Merchant to pay Tier One A Rent and continue business as a going concern and on a commercially sustainable basis, with a reasonable profitability. Merchant shall be considered eligible for Tier Two rent if Merchant establishes that paying Tier One A rent would cause a lack of profitability (where revenues exceed expenses by less than 10%). Merchant shall cooperate with all inquiries the auditor deems reasonably necessary, including but not limited to the following (where applicable to particular merchants):
 - **6.2.3.3** (a). Review of federal business and/or personal tax returns if the auditor in its sole discretion determines that those documents would be relevant to the audit (for example, where Merchant does not maintain business bank records, sales receipts, certified daily ledgers, cash register tapes, etc.);

- 6.2.3.3 (b). Review of sales tax reported to the state;
- **6.2.3.3 (c)**. Review of any bank records into which deposits or withdrawals are made relating to the concession;
- **6.2.3.3 (d).** Review of disbursements, including invoices or receipts for all expenses;
- **6.2.3.3 (e)**. Totaling receipts from receipt books and/or cash register tapes and tracing to deposit records and bank statements;
- **6.2.3.3 (f)**. Ensuring that receipts are issued for each sale by observing a merchant's sales to customers on random days not specified in advance;
- **6.2.3.3 (g).** Comparing information in income tax returns to cash receipts and cash disbursement ledgers/records;
- **6.2.3.3 (h)**. Tracing disbursement records back to supporting documentation, such as cancelled checks and/or invoices;
- **6.2.3.3 (i)**. Assessing the reasonableness of cash disbursements (to determine whether expenses are related to the Olvera Street business, such as payroll expenses and costs of good sold);
- **6.2.3.3 (j)**. Review of certified daily ledgers maintained by any merchant of cash or other receipts and/or paid expenses.
- **6.2.3.4.** If Merchant seeks Tier Two rent status within the first year after Lease Commencement Date but Merchant did not maintain records and documents sufficient to comply with the requirements set forth in 6.2.3.3 above, then Merchant shall provide the auditor with all records and document that Merchant possesses. If the auditor finds that Merchant displays a likelihood of qualifying for the Tier Two requirements, then Merchant shall be provisionally granted Tier Two status for six months. Beginning no later than Concession Agreement Commencement Date, Merchant shall keep records and documents that allow Merchant to comply fully with the audit requirements.
- **6.2.3.5**. If at any time the auditor determines that Merchant does not meet the requirements to establish Tier Two status, then Merchant shall begin paying Tier One A or Tier One B rent and repay the City within 30 days the difference between the Tier One A or Tier One B rent and Tier Two rent plus interest calculated at 12% per annum or the maximum rate allowed by law, whichever is less, from the time Merchant first paid Tier Two rent.
- **6.2.3.6.** Subject to 6.2.3.4 above, if Merchant presents the auditor with insufficient documentation to reasonably satisfy the auditor, Merchant shall not be eligible for Tier Two rent. Merchant shall not be eligible for Tier Two rent if the auditor reasonably determines that Merchant materially underreported revenues to the City or to federal or state governments.
- **6.2.3.7**. To the extent allowed by law, all of the information furnished by Merchant to the auditor shall be deemed confidential and confidentiality shall be reasonably maintained by the auditor.

- **6.3.** Rent. Merchant shall pay to City for each Concession Agreement Year during the Term of this Concession Agreement Rent payable in equal monthly installments. The Concession Agreement Commencement Date ("Rent Commencement Date") shall be November 1, 2010. Each monthly installment shall be paid in advance and shall be due on the first (1st) day of each month, without any set off or deduction. Payment shall be made to El Pueblo de Los Angeles Historical Monument Authority Department at the place given for notices in Article 2.2 (page 3) or to such other person or address as City may designate in writing from time to time. Payment must be in United States dollars, either in the form of a check (drawn on a bank located in the United States) or via electronically transmitted funds. City reserves the right to require payments in the form of cashier's check or postal money order. Merchant's obligation to pay rent pursuant to this Concession Agreement is based solely on Merchant's possession of the Premises.
 - **6.3.1. Rent During Holdover.** Rent for any month to month tenancy beyond the expiration of this Concession Agreement, or any extension or renewal thereof, shall be paid in the same manner as if the Term of this Concession Agreement had commenced with the first day of such holdover.
- **6.4.** Additional Rent. "Additional Rent" shall be all payments other than Rent due to City by Merchant as required and described in this Concession Agreement and shall be paid upon demand. City shall have the same rights and remedies hereunder with respect to the collection of said Additional Rent as it has with respect to the collection of Rent. Items which may generate Additional Rent include, without limitation: Security Deposit increase, if any (Section 10.1, page 16); public area maintenance and patrol services charges, and administrative fees levied for serving notice and pursuing enforcement of the use provisions and /or the Non-Encroachment Policy contained herein.

6.5. Late Payments.

- **6.5.1.** Interest On Unpaid Rent and Expenses. Any Rent, expenses or other sums owing to City pursuant to the provisions of this Concession Agreement, not paid when due shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate allowed by law, whichever is less, until paid, in addition to any Late Charges provided for in Section 6.5.2.
- **6.5.2.** Late Charges. For each such late payment that is not paid within ten (10) days after the date due, Merchant shall pay to City a service charge equal to ten percent (10%) of the overdue amount. Merchant acknowledges and agrees that such late payment by Merchant will cause City to incur costs and expenses not contemplated by this Concession Agreement, the exact amounts of which will be extremely difficult to ascertain, and that such service charge represents a fair estimate of the costs and expenses which City would incur by reason of Merchant's late payment. Merchant further agrees that such service charge shall neither constitute a waiver of Merchant's default with respect to such overdue amount nor prevent City from exercising any other right or remedy available to City.
- **6.5.3.** Increase in Security Deposit. Following any three consecutive late payments of Rent, City may, in addition to any other remedies or rights it may have, upon notice to Merchant, require that Merchant increase the amount of any Security Deposit required herein pursuant to Article 10 by 100%, which additional Security Deposit shall be retained by City, and which may be applied by City, in the manner provided herein with respect to any Security Deposit required herein.
- **6.6. Back Rent.** Rent owed pursuant to this Concession Agreement shall be due as of November 1, 2010. If between November 1, 2010, and the Execution Date of this Concession Agreement, Merchant paid Rent less than the amount set by this Concession

Agreement, the difference ("Back Rent") shall be paid by Merchant to City in equal installments over a period of twenty-four (24) months commencing on the Execution Date of this Concession Agreement. However, if Merchant's first twelve (12) months of total payments (back rent, CAM, security deposit and rent) to City pursuant to this Concession Agreement will exceed 150 percent of the total amount paid by Merchant in the twelve (12) months immediately prior to the Execution Date of this Concession Agreement, then Merchant may pay the Back Rent in equal installments over a period of sixty (60) months commencing on the Execution Date of the Concession Agreement.

ARTICLE 7. ANNUAL BASE RENT ADJUSTMENTS AND FAIR MARKET RENT ADJUSTMENT

- Computation of Base Rent Increases. For the first 60 months of this Concession Agreement, Rent shall be automatically adjusted pursuant to the provisions in Article 6. Commencing with the sixth (6th) Concession Agreement Year (as defined in Section 5.2, page 8), and continuing on the commencement of each Concession Agreement Year thereafter, with the exception of the Fair Market Rent Adjustment every fifth year, the Rent payable under Section 6 shall be automatically adjusted, effective on the commencement of each Concession Agreement Year (The "Adjustment Date"), proportionately by the increase, if any, in the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County. California Area (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is for the month which is four (4) months prior to Concession Agreement Commencement Date ("Beginning Index"). The Index for the month which is four (4) months prior to each Adjustment Date ("Extension Index") is to be used in determining the amount of the adjustment. In other words, if the Extension Index has increased over the Beginning Index, the Base Rent for the following Concession Agreement Year shall be set by multiplying the Rent for the first (1st) Concession Agreement Year (i.e.,\$ 17,178. Oper year) by a fraction, the numerator of which is the Extension Index and denominator of which is the Beginning Index. In no event, however, shall the Rent for a Concession Agreement Year ever be less than the Rent in effect immediately preceding such Concession Agreement Year.
- **7.2. Market Rent Adjustment.** Commencing with the sixth (6th) Concession Agreement Year and every fifth (5th) year thereafter during the Term of the Concession Agreement and any extension of the Concession Agreement, the Rent shall be adjusted to fair market rent rates, according to the following procedures. The first market rent rate adjustment shall be effective and the new Rent paid by Merchant beginning on month 61. In the interim years, the Concession Agreements will be escalated annually based on the Index.

Every five (5) years, the Rent shall be reset to fair market rent based on appraisal reports. The market reset process shall begin six months before each five-year anniversary of the Concession Agreement and shall occur as follows: (1) City and Merchant, or their designated representatives, shall meet for a sixty (60) day period to negotiate and attempt to agree on a rent increase; (2) if no agreement is achieved, then the City shall have forty-five (45) days to commission and produce a certified MAI appraisal of "market rent" and Merchant shall have fortyfive (45) days to commission and produce a certified MAI appraisal of "market rent." Each appraisal must comply with the Uniform Standards of Professional Appraisal Practices and the Appraisal Institute. The term "market rent" shall be as defined in the Appraisal Institute Dictionary of Real Estate Appraisal. If a party fails timely to commission and produce a certified MAI appraisal of "market rent," then the new rent shall be as established in the certified MAI appraisal of "market rent" that was timely commissioned and produced by the other party. The City and Merchant appraisers (or, alternatively, a judge of the Los Angeles County Superior Court on Ex Parte Application by either party) shall select a third, neutral MAI-certified appraiser qualified to render an appraisal of the downtown retail market. The designated neutral appraiser shall choose market rates for Merchant from those specified in the appraisal that is best supported and reasonable. The designated neutral appraiser shall have 30 days to complete his or her analysis and render a conclusion. If that timing is deemed not possible by the neutral appraiser, both sides shall jointly stipulate to an agreement for time of completion. The conclusion of the third

appraiser shall be binding and shall become the new Rent. Merchant shall not seek to challenge the conclusion of the third appraiser in any forum including, but not limited to, Commission, City Council or the courts.

7.3. Changes in the Index. If the Index changes so that the base year of the Index differs from that used as of the Beginning Index, the Index shall be converted in accordance with the conversion factors published by the United States Department of Labor, Bureau of Labor Statistics. Should said Index be discontinued, or be published with such infrequency as to render the formulae in this Article to be unworkable, or be altered in some other manner, then City and Merchant shall mutually adopt a substitute index or substitute procedure which reasonably reflects and monitors consumer prices. The substitute index must obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

ARTICLE 8. EXTENSION PERIOD

- **8.1.** Extension Period; Request for Extension. Merchant shall have one (1) 20-year option to extend Term of the Concession Agreement. If Merchant is not in default of this Concession Agreement as determined, in part, by Merchant Evaluations as provided for in Section 22.2, Merchant may submit to City a written notice ("Extension Notice") to extend this Concession Agreement ("Extension Option") for twenty (20) years ("Extension Period"), which Extension Request shall be received by City no later than one hundred and eighty (180) days prior to the then-scheduled Concession Agreement Termination Date. The Rent for the Extension Period shall be as provided in this Concession Agreement.
- **8.2. Extension Option Term.** The Extension Period shall be upon the same provisions, covenants, and conditions as those contained in this Concession Agreement

ARTICLE 9. MERCHANT'S RECORDS

- **9.1. Preparation and Retention of Records.** Merchant shall prepare and keep adequate financial records accurately reflecting daily receipts from all sales and other transactions on or from the Premises by Merchant and any other entities or persons conducting any business upon or from the Premises, as well as purchase of merchandise and other concession expenses.
- **9.2.** Cash Register Receipts. Merchant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total which shall be sealed in a manner approved by City, and having such other features as shall be required and approved by City.
- **9.3.** Original Business Records. Merchant shall keep on the Premises (or at some other place agreeable to City within the County of Los Angeles) for at least three (3) years following the end of any Concession Agreement Year the financial records required with respect to said concession, including all pertinent original sales records. If such pertinent original business records are kept at a place other than the Premises, Merchant shall bring such pertinent original sales records to the Premises or such other place reasonably designated by City upon request of City.
- **9.4.** City's Right of Examination. City and City's authorized representative shall have the right to examine Merchant's financial records required by this Article during regular business hours and upon five (5) days written notice. City may examine Merchant's financial records required by the Article as City deems necessary:
 - (a) In connection with Merchant's application for Tier Two (Hardship) Rent, pursuant to Section 6.2.3; or
- (b) At any time after Merchant initiates a damage claim against City. City encourages Merchant to submit to City Merchant's financial records for the purpose of

determining fair market rental value during the market rent adjustment process required in Article 7.2 of this Concession Agreement,

ARTICLE 10. SECURITY DEPOSIT

- 10.1. Security Deposit. Merchant shall maintain on deposit with City throughout the Term of this Concession Agreement a deposit in cash as security for the performance of Merchant's obligations under this Concession Agreement ("Security Deposit"). amount of the Security Deposit shall be equal to two (2) months Rent payable in equal installments over a period of twenty-four (24) months commencing on the Execution Date of the Concession Agreement. However, if Merchant's first twelve (12) months of total payments (back rent, CAM, security deposit and rent) to City pursuant to this Concession Agreement will exceed 150 percent of the total amount paid by Merchant in the twelve (12) months immediately prior to the Execution Date of this Concession Agreement, then Merchant may pay the amount of the Security Deposit in equal installments over a period of sixty (60) months commencing on the Execution Date of the Concession Agreement. City shall hold the Security Deposit, and City shall have the right at any time to apply part or all of the Security Deposit to cure Merchant's default in payment of Rent, to repair damages to the Premises resulting from Merchant's occupancy, to clean the Premises upon termination of this Concession Agreement, and any expense, loss, or damage that City may suffer because of Merchant's default under this Concession Agreement. Merchant shall be obligated to maintain the Security Deposit at its full amount by payment of Additional Rent, and City, upon sixty (60) days prior written notice, may require Merchant to deposit an additional amount where events (e.g., an increase in the Rent amount) reasonably require an increase in the amount of the Security Deposit (see also Section 6.5.3, page 13, for increased Security Deposit in the event of late Rent payments). Upon termination of this Concession Agreement, City may utilize all or part of the Security Deposit to restore the Premises to its original condition, less normal wear and tear. Deductions may include the removal of personal property. Deductions also may include sums reasonably necessary to compensate City for any loss or damage, foreseeable or not, caused by an act or omission of Merchant and Merchant's invitees. Neither the Security Deposit nor its application by City shall be a bar or defense to any action in unlawful detainer or to any action which City may at any time commence for a breach of any of the covenants or conditions of this Concession Agreement. City's obligation with respect to the Security Deposit are those of a debtor and not a trustee. City can maintain the Security Deposit separate and apart from City's general funds or can commingle the security deposit with City's general fund or other funds. City shall not pay Merchant interest on the Security Deposit.
- 10.2. Return of Security Deposit. City shall retain any portion of the Security Deposit which may properly be utilized by City for the purposes described in this Article 10 and shall return the balance of the Security Deposit to Merchant: upon termination of this Concession Agreement by reason of damage or destruction of the Premises, default on the part of City, or taking of the Premises by right of eminent domain; or upon the any other termination of this Concession Agreement, including any month-to-month holdover, within two (2) weeks after the date City receives possession of the Premises, unless the Security Deposit will reasonably be used to repair damages to the Premises caused by Merchant or to clean the Premises, in which case the return shall be within thirty (30) days after the date City receives possession of the Premises.

ARTICLE 11. TAXES, LICENSES AND PERMITS

11.1. Taxes. Merchant shall pay any tax which may be assessed against Merchant's interest in the Premises and all taxes levied upon trade fixtures and personal property located in the Premises. In no event shall City be obligated or required to pay these or any other taxes levied or assessed by reason of Merchant's occupancy, possession and control of the Premises.

- 11.2. Licenses and Permits. Merchant shall obtain any licenses and permits required for the use and occupancy of the Premises and shall pay any and all taxes, fees, or charges regularly levied, charged or assessed by the City of Los Angeles or other public agencies upon businesses of the type conducted in the Premises. Such taxes, fees, or charges are the obligation of the Merchant.
- 11.3. Acknowledgment of Taxable Interest. By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest will be subject to property taxation. Merchant, as the party in whom the possessory interest is vested, shall be responsible for the payment of all property taxes, if any, levied upon such interest. Merchant acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided. Merchant acknowledges that by this Article it has been informed of the necessity of filing a claim for exemption to obtain any available exemptions from said tax, and has also been advised that exemption from taxes may not be granted, and that City has no control as to whether or not such exemption will be granted.

ARTICLE 12. TRANSFER OF INTEREST

- 12.1. Prohibitions and Limits on Transfer of Concession Agreement Interests. Merchant shall not involuntarily transfer by operation of law, or voluntarily transfer (either by assignment, use agreement, license or concession) the Concession Agreement or Premises, in whole or in part, nor sublet the use of, or license the use of all or any part of the Premises, except as provided herein.
 - **12.1.1. Transfers of Interest Conditions.** City will consider written requests by Merchant to transfer the Premises or rights and duties of the Concession Agreement consistent with this Article and, after such consideration, may consent to such transfer at its reasonable discretion, as described in Section 12.1.3 below. Notwithstanding this consideration or consent, the proposed transfer will not take effect until all City contracting approvals and formalities are observed, and an amended Concession Agreement is executed by all parties.
 - **12.1.1.1.** If Merchant pays Tier One A rent, Tier One B rent or Tier Two rent, then Merchant may make an assignment to an immediate family member (spouse, registered domestic partner, children, adopted children and blood relative in the second degree) provided the Concession Agreement is assigned to, or placed in trust with, a single designee for all concession purposes.
 - 12.1.1.2. If Merchant pays Tier One A rent, Merchant may also make a one-time assignment to another existing Olvera Street merchant (merchant to whom assignment is proposed must have been a concessionaire since at least 1999). However, if Merchant requesting the assignment at any time paid Tier One B rent or Tier Two rent, then said Merchant may only make the one-time assignment described in the preceding sentence if said Merchant paid Tier One A rent for at least 12 consecutive months prior to the requested assignment.
 - **12.1.2. Transfers to Qualified Entities.** Any assignment permitted in this Article may be made to a legally formed and legally qualified entity (corporation, limited liability company or partnership) provided that such an assignee includes an assignee authorized by this Article who is the Majority Owner. The Majority Owner must be the day-to-day operator of the concession.
 - 12.1.3. City's Consent. City shall not unreasonably withhold its consent to a proposed transfer of the Concession Agreement or Premises consistent with this Article. The parties hereby agree that City may take into consideration the following in granting or withholding its consent to a requested assignment. City's failure to consent to a transfer

otherwise authorized by this Article shall be deemed reasonable as a matter of law where one or more of the following apply:

- (a) Only applicable to an assignment sought to another merchant under Section 12.1.1.2: The merchant to whom the assignment would be made (the assignee) has made three consecutive late or partial rent payments with respect to other City property including, but not limited to, on Olvera Street, without the City's prior written permission;
- (b) The merchant to whom assignment is proposed does not possess sufficient financial strength to assure compliance with the Concession Agreement terms:
- (c) The merchant to whom assignment is proposed has been convicted, pled guilty, or pled nolo contendere of a crime of moral turpitude, or is engaged in a business which is incompatible with the Monument's business plan or historical significance:
- (d) The merchant to whom assignment is proposed intends to use the Premises in manner different from Merchant's use of the Premises allowed under the Concession Agreement:
- (e) The Merchant owes the City any monies including, but not limited to, back Rent: or
- (f) The transfer of the Concession Agreement or Premises is requested within one (1) year of expiration of the Concession Agreement.
- **12.1.4.** Improper Transfer. If Merchant agrees, orally or in writing, to transfer, assign, sublet or license any portion of the Premises in any manner inconsistent with this Concession Agreement, then any such transfer, assignment, sublease or license shall be void and be of no legal effect, and the City shall not recognize or grant any rights to any other party relating to said improper transfer, assignment, sublease or license. In the event of such an improper transfer, Merchant shall forfeit any remaining option to extend the term of the Concession Agreement as provided herein-above in Section 1.3, page1. The City may also seek all damages and remedies available under the Concession Agreement and available in law and equity for any such improper transfer. Merchant also shall defend, indemnify and hold harmless City and any and all of City's boards, commissions, officers, agents, employees, assigns, and successors in interest and, at the option of City, defend by counsel satisfactory to City, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys' fees and cost of litigation, arising out of or relating to Merchant agreeing to transfer, assign, sublet or license any portion of the Premises. Rights and remedies available to City under this Section are cumulative of those provided for elsewhere in the Concession Agreement,
- 12.1.5. Re-set to Market Rate. If the City approves a transfer to a merchant pursuant to Section 12.1.1.2, upon the transfer, the Rent due hereunder from transferee resets to a market rate. A transfer to a merchant pursuant to Section 12.1.1.2 during the first year after Concession Agreement Commencement Date will result in a Rent due from the transferee at the level set by the Commission on April 1, 2010. Commencing with the second year after Concession Agreement Commencement Date, and each year thereafter through the fifth year, transferee's Rent will be the April 1, 2010 Commission-approved rent, adjusted by the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics, with a cap on such CPI increase of 5% yearly. Thereafter, for all transfers approved by the City after the first 60 months of this Concession Agreement, transferee's Rent will be computed pursuant to Article 7.

ARTICLE 13. DEATH OF MERCHANT AND FAILURE TO OPERATE

13.1. Death of Merchant or Co-Merchant/Failure to Operate. If Merchant is a single individual, upon the death of Merchant Merchant's interest in the Concession Agreement shall

immediately terminate and the Premises will be voluntarily vacated thirty (30) days after the death of Merchant. Any representative of Merchant or Merchant's estate in possession of the Premises during the thirty-day period following Merchant or co-Merchant's death shall not be considered to be an assignee or submerchant approved by City. Any payment of Rent during and for the thirty-day period shall be considered to be made on behalf of decedent Merchant, or his or her estate, and shall not create a new tenancy. The Concession Agreement will also terminate if Merchant fails to operate its business of thirty (30) days on account of Merchant's disability and no transfer previously approved by City in writing pursuant to this Concession Agreement remains to operate the business after the expiration of the thirty-day period.

If there is no authorized representative of Merchant and Merchant dies or becomes so disabled that Merchant can no longer operate its business in the Premises, Merchant hereby authorizes City to enter the Premises, to pack Merchant's belongings and personal property and trade fixtures, to remove said property from the Premises and to store it. If Merchant or Merchant's authorized representative subsequently fails to claim Merchant's belongings and personal property, City shall, at Merchant's expense, dispose of such property. City shall not be liable for any loss of or damage to, Merchant's property not caused by City's gross negligence or willful and bad faith conduct, nor shall City be liable in any way to Merchant for entering the Premises, taking possession and control of Merchant's property, and removing it.

ARTICLE 14. BANKRUPTCY - INSOLVENCY

14.1. Bankruptcy. In the event that all or substantially all of Merchant's assets are placed in the hands of a receiver or trustee and such receivership or trusteeship continues for a period of thirty (30) days; or Merchant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt; or any proceedings under the Bankruptcy Act is instituted by Merchant or filed against Merchant as it now exists or under any amendment thereof which may hereafter be enacted, and this Concession Agreement is not terminated, the trustee or any vendee of trustee or vendor shall take subject to all of the provisions and conditions of this Concession Agreement, including, but not limited to, the use requirements specified in Exhibit C, and further that any unpaid Rents or sums owed to the City are fully paid.

ARTICLE 15. IMPROVEMENTS

Modifications, Additions, Title to Improvement. In the event that Merchant desires to make modifications, improvements or additions to the Premises or any part of the Premises for the following items:, structural design, accessibility barrier removal work, landscape design, interior or exterior fixtures, or furnishings that vary from an old world Mexican theme, (collectively "Alteration(s)"), the approval in writing of City shall be obtained prior to the commencement of any Alterations, which approval shall not be unreasonable withheld. All modifications and additions shall be in accordance with this Article. Once any Alteration has been approved by City and the work has begun, Merchant shall, with reasonable diligence, prosecute to completion all approved Alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to City as required herein, and shall comply with all applicable governmental permits, laws, ordinances and regulations. It shall be the responsibility of Merchant, at its own cost and expense, to obtain all licenses, permits and other approvals necessary for the construction of approved Alterations. Title to all Alterations and Improvements existing or hereafter erected on the Premises, regardless of who constructs such improvements, shall immediately become City's property and, at the end of the Term, shall remain on the Premises without compensation to Merchant. Merchant agrees never to assail, contest or resist title to the Alterations and improvements. The foregoing notwithstanding, City may elect, by notice to Merchant, that Merchant must remove any Alterations that are peculiar to Merchant's use of the Premises and are not normally required or used by City and/or future occupants of the Premises. In this event, Merchant shall bear the cost of restoring the Premises to its condition prior to the installment of the Alterations.

- **15.1.1.** Merchant acknowledges that the Premises are part of an historic building and Monument. Merchant may not remove or modify the historic or architectural fabric or features of the Premises without prior written approval from City, which City may refuse to give at City's sole discretion.
- **15.1.2.** No awning, shade, sign, advertisement, or notice shall be inscribed, painted or affixed on or to any part of the outside or inside of the Premises except it be of such color, size and style and in such place upon or in the Premises as may be designated by City.
- **15.1.3.** Lettering on doors and other exterior signs to the Premises shall be subject to City's prior approval, which approval is hereby granted on current lettering on doors unless such lettering violates City law.
- **15.1.4.** Electric wiring of every kind, boring or cutting for wires, and the location of telephone and telegraph instruments shall be designated by City.
- 15.1.5. Notwithstanding any other provision of this Concession Agreement, in the event any Merchant conducts restaurant operations in the Premises, at least once every three (3) months or more often as needed, Merchant shall hire a licensed, insured plumbing contractor to remove debris, clear, unclog or "iet." the sewer lines that carry debris from the Premises, unless a sewer line is no longer in service. Merchant shall select the licensed, insured plumbing contractor from a list pre-approved by City. Merchant shall bear the sole responsibility for payment for the plumbing maintenance. Merchant shall provide to City, by no later than the tenth (10th) day after completion of the plumbing maintenance, documentation of the work performed and the Merchant's payment for the work. In the event Merchant fails to perform the quarterly plumbing maintenance and provide written proof of the work. City may contract directly with the plumbing contractor to perform the maintenance work. Merchant must permit the plumbing contractor to access the Premises as specified in Section of this Concession Agreement. All cost for the plumbing work incurred by the City on the Merchant=s behalf is hereby deemed Additional Rent, and Merchant shall promptly pay the cost of such work upon receipt of an invoice therefor.
- **15.1.6. General Construction Guidelines.** Except as provided by law or regulations, the California Building Code (Title 24, California Code of Regulations) shall apply. Merchant shall use the Construction Specifications Institute (CSI) Master Guide Specifications and Historic Building Codes in the planning, design, construction and completion of all Improvements. Merchant shall place great importance on quality assurance by complying with all governing codes and regulations, providing products of acceptable manufacturer's instructions.

ARTICLE 16. CONSTRUCTION AND COMPLETION OF CAPITAL AND MERCHANT IMPROVEMENTS

16.1. Installation of Fixtures and Equipment. All Merchant Improvements to the Premises shall be the responsibility of Merchant, at Merchant's sole cost and expense. Merchant shall install at the Premises all trade fixtures, equipment, and furnishings necessary or proper for the operation of Merchant's business. All such items shall be of first quality, although refurbished items in good working order that keep with an old world Mexican theme are acceptable. All items shall be maintained by Merchant in good condition and repair throughout the Term of this Concession Agreement. Restrooms, plumbing, wiring attached to the existing structure, lighting fixtures, and floor-to-ceiling partitions shall be construed as alterations to the Premises.

- 16.2. Monument Systems Defined. As used in this Concession Agreement, the defined term "Capital Improvements" shall mean any machinery, transformers, duct work, conduit, pipe, bus duct, cable, wires, and other equipment, facilities, and systems, to the extent within The Monument or the infrastructure owned and operated by the City of Los Angeles, designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer, or other systems or equipment which service The Monument in whole or in part; provided, however, that such equipment, facilities, and systems which serve solely the Premises or Merchant with respect to communications, alarm, security, and computer systems shall not be considered part of the Monument Systems to the extent that such equipment, facilities, and systems may be accessed and altered without interference with any Monument Systems.
- 16.3. Notices of Non-Responsibility. Before any improvements, alterations, or construction work of any kind are performed by Merchant, subsequent to completion of Merchant's initial work as specified in this Concession Agreement and the attachments hereto, Merchant shall first give to City ten (10) days notice in order that City may post and record a non-responsibility notice. City shall have the right to post and keep posted on the Premises notices such as those provided for by Section 3094 of the Civil Code of California, or which City may deem to be proper for the protection of City's interest in the Premises. Upon completion of any construction by Merchant, Merchant or Merchant's contractor shall file for record in the Office of the County Recorder in and for the County of Los Angeles a Notice of Completion as permitted by law and provide a copy of said notice to City.

ARTICLE 17. EASEMENTS FOR MAINS, CONDUITS, AND PIPES

17.1. Easements. City reserves to itself and Merchant hereby grants to City such licenses of easements in or over or under the Premises or any portion thereof as shall be reasonably required for the installation or maintenance of mains, conduits or pipes or for construction of other facilities to serve the Monument or any part thereof, including the premises of any occupant. City shall pay for any alteration required on the Premises as a result of any such exercise, occupancy under or enjoyment of licenses or easements. Further, no exercise, occupancy under, or enjoyment of licenses or easements by City shall result in unreasonable interference with Merchant's use, occupancy or enjoyment of the Premises as contemplated by this Concession Agreement.

ARTICLE 18. MAINTENANCE AND HOUSEKEEPING

- 18.1. City's Code Compliance Obligations. If at any time during the Term of this Concession Agreement, any regulatory or municipal agency determines that repair or construction of roofs, foundations, structural components of buildings, the exterior surface of outside walls, main plumbing lines, main natural gas lines, and electrical lines up to the main circuit box is necessary to bring the Premises into compliance with applicable building codes, City shall correct such non-compliance at its sole cost and expense. Temporary relocation of Merchant or rent abatement during repairs or construction shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the Commission.
- 18.2. Merchant's Obligations. Merchant shall maintain all facilities and personal property and equipment on the Premises in good condition and repair at Merchant's sole cost and expense at all times during the term of this Concession Agreement. Such maintenance shall conform to City standards in accordance with Exhibit "F", Facility Maintenance Program. The term maintenance, for the purposes of this Concession Agreement, is defined as all repairs to real property improvements and preservation work necessary to maintain Premises facilities including but not limited to the infrastructure of facilities, personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful

- life. Should Merchant fail, neglect, or refuse to undertake and complete any required maintenance, City shall have the right pursuant to Section 18.2.1 to perform such maintenance or repairs for Merchant. In this event, Merchant shall promptly reimburse City for the cost thereof, provided however, except in case of an emergency, that City shall first give Merchant ten (10) days written notice of its intention to perform such maintenance or repairs. City shall not be obligated to make any repairs to or maintain any improvements on the Premises. Merchant hereby expressly waives the right to make repairs at the expense of City and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto if any there be. City has made no representations respecting the condition of the Premises, except as specifically set for in this Concession Agreement. Prior to initiating any maintenance, Merchant shall submit a maintenance plan to City describing the maintenance work it intends to udertake
 - **18.2.1.** If Merchant refuses or neglects to repair, replace or maintain the Premises, or any part thereof, in a safe manner and a manner reasonably satisfactory to City, City shall have the right, upon giving Merchant ten (10) days written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Merchant. In such event, Merchant shall pay the cost of such work as Additional Rent promptly upon receipt of an invoice thereof.
 - **18.2.2.** On ten (10) days written notice (except in emergency wherein no notice is required) City may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, additions to the Premises or to the building of which the Premises are a part, or to any equipment located in the building as City shall desire or deem necessary or as City may be required by any governmental or quasi-governmental authority or court order or decree. In the case of emergency requiring immediate attention, City's right to enter may be exercised at City's reasonable discretion.
- 18.3. Compliance with Laws. Merchant shall continuously and without exception repair and maintain the Premises, including Merchant Improvements, Alterations, fixtures, and furnishings, in an order and condition in compliance with all Laws and Orders. As used in this Concession Agreement, the defined term "Laws and Orders" includes all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued, including, without limitation, government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords, or merchants. Merchant, at Merchant's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to or are triggered by (a) Merchant's particular use of the Premises. (b) the Merchant Improvements located in the Premises, or (c) any Alterations located in the Premises. City, at City's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to the any of the structural or mechanical components of the Monument for which City is responsible under this Concession Agreement. If, however, a portion or all of such compliance work on such structural or mechanical components of the Monument is triggered by the Merchant Improvements or Alterations requested by Merchant under Article 16, Merchant shall bear all expense of such work on such portion of the structural or mechanical components of the Monument.
- 18.4. Public Area Maintenance: Patrol Services. For the first Concession Agreement Year of the Term, and the first fractional calendar month, if any, Merchant shall pay to City Additional Rent at the rate of \$0.36/square foot per month for public area maintenance and patrol services ("Common Area Maintenance" or "CAM"). Neither City nor any of its employees shall be liable to Merchant for damage allegedly or proximately resulting from insufficient patrol services, or for failure of the patrol to prevent an act by any person. For each Concession Agreement Year thereafter, the amount paid as Additional Rent for maintenance and patrol services shall be

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increased or decreased from the rate of the previous year to reflect any reasonable change in the costs incurred by the El Pueblo Department.

ARTICLE 19. UTILITIES

- 19.1. Water, Sewage and Trash. Merchant shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises, including but not limited to delivery of water to the Premises, and sewage and trash disposal. Merchant shall install separate water meter, grease interceptors and other infrastructure as needed to effect the intent of this Section. Merchant shall pay for water directly to the local public utility. When installing facilities, no trees shall be trimmed or cut without permission of City. Removal and disposal of all rubbish, refuse, and garbage resulting from Premises' operations shall be the Merchant's responsibility and shall be disposed of outside the Monument and in accordance with the City's Rules and Regulations and applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of City.
- 19.2. Electricity, Gas and Telecommunications. Merchant shall be responsible for arranging for the provision of electricity and gas to the Premises. Electricity and gas shall be separately metered and Merchant shall pay for any usage at the rates charged by local public utilities. Merchant shall be responsible for arranging for the provision of any telecommunications services to the Premises, including, without limitation, telephone and cable service. Charges for all telecommunications supplied to the Premises shall be paid by Merchant.
- **19.3. Air Systems.** Merchant shall operate, repair and maintain a heating, ventilating, cooling, air handling and control system ("**HVAC**") serving the Premises.
- **19.4.** Customer Parking. Public parking and Merchant parking shall be pursuant to City Rules and Regulations as contained in Exhibit C, and as amended from time to time by the Commission
- 19.5. Casualty, Damage or Destruction. If the Premises or the Monument suffer any substantial casualty or are destroyed or damaged by fire, earthquake, or from any cause whatsoever, Merchant and City shall each have the option to terminate this Concession Agreement upon giving fifteen (15) calendar days prior written notice to the other party of the exercise of this termination right.
- **19.6. Waiver.** The provisions contained in this Concession Agreement shall supersede any contrary laws now or hereafter in effect relating to damage or destruction, and City and Merchant hereby waive the provisions of California Civil Code sections 1932(2) [termination where greater part of thing hired perishes] and 1933(4) [automatic termination upon destruction of thing hired].
- 19.7. Termination. If either party terminates this Concession Agreement as permitted by this Article, then this Concession Agreement shall end effective the date specified in the termination notice. The rent and other charges shall be payable up to the effective date of termination and shall account for any abatement. City shall promptly refund to Merchant any prepaid, unaccrued rent, accounting for any abatement, less any sum then owing by Merchant to City.

ARTICLE 20. INSURANCE AND INDEMNIFICATION

20.1. Insurance. Merchant, at Merchant's own cost and expense, shall, prior to any possession or other use of the Premises, secure and maintain during the entire Term and any extension or holdover of this Concession Agreement, insurance coverage for the Premises not less than the amounts and types listed on Form Gen 146 attached as Exhibit H. All insurance

must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to City as approved in writing by the City Administrative Officer. Evidence of required insurance coverages shall be provided to City prior to the Execution Date of the Concession Agreement, in accordance with the Instructions and Information on Complying with City Insurance Requirements (Rev. 10/09) attached as Exhibit H-1.

- **20.1.1. General Liability Insurance.** Merchant shall provide and maintain commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000) Combined Single Limit per occurrence with a general aggregate of not less than Two Million Dollars (\$2,000,000). City, its boards, officers, agents and employees, shall be included as additional insureds in all General Liability insurance required herein. Merchant shall also keep in force fire legal liability insurance coverage in the amount of One Hundred Thousand Dollars (\$100,000). At any time prior to the City's approval of any Extension Option under Article 8, the City may increase the amount of General Liability Insurance and other insurance required by this Section to a commercially reasonable amount that provides the City with full protection for any insurable loss.
- **20.1.2. Improvements or Alterations Insurance.** Before any improvements, alterations, or construction work of any kind are performed by Merchant, Merchant shall obtain and maintain, at Merchant's expense, liability and worker's compensation insurance (if applicable) adequate to fully protect City as well as Merchant from and against any and all liability for death of or injury to any person or for loss or damage to property caused in or about or by reason of Merchant's construction. In addition, Merchant shall carry "Builder's All Risk" insurance in an amount equal to the replacement cost of such Alterations during the course of construction.
- **20.1.3. Workers' Compensation and Employer's Liability.** Merchant shall provide and maintain Workers' Compensation coverage in the amount required by statute and Employer's Liability coverage in an amount not less than One Million Dollars (\$1,000,000) each accident or disease.
- **20.1.4. Merchant's Property.** City will not insure Merchant's equipment stored goods, other personal property, fixtures, or merchant improvements, nor such personal property owned by Merchant's invitees. City shall not be required to repair any damage to any personal property or trade fixtures installed in the Premises by Merchant caused by fire or other casualty, or to replace any such personal property or trade fixtures. Merchant may, at Merchant=s sole option and expense, obtain physical damage insurance covering Merchant's equipment, stored goods, other personal property, fixtures or merchant improvements or obtain business interruption insurance.
- 20.1.5. Notice Of Reduction in Insurance. All insurance policies required under this Concession Agreement shall expressly provide that such insurance shall not be canceled or materially reduced in coverage or limits except after thirty (30) days written notice (ten (10) days for non-payment of premium) to City Administrative Officer, Risk Management, City Hall East, Room 1240, 200 North Main Street, Los Angeles, California 90012.
- **20.1.6. Default.** If insurance is canceled, lapsed, or reduced below minimums required in this Article, City may consider this Concession Agreement to be in default and may terminate it. Termination shall occur at the expiration of a ten (10) day notice given in accordance with the provisions of the Code of Civil Procedure Section 1162. At the termination of ten (10) days or sooner, the Merchant shall vacate the Premises and the Merchant shall have no right to possess or control the Premises or the operations conducted therein. If the Merchant does not vacate, City may utilize any and all court proceedings to obtain a right to possession.

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- **20.1.7. Adjustment of Insurance Levels.** City may, from time to time during the Term or any extension or holdover of this Concession Agreement, applying generally accepted risk management principles, change the amounts and types of insurance required hereunder upon giving Merchant ninety (90) days prior written notice.
- **20.2. Waiver of Subrogation.** Each party hereto agrees to waive its rights of recovery against the other for any physical damage it may sustain to the extent that such damage is covered by valid and collectible property insurance. Each party will notify its respective insurers of such agreement. Further, each party agrees to waive in advance its insurer's rights of subrogation to the extent that its insurance policies so permit.
- **20.3.** Indemnification. Except for the active negligence or willful misconduct of City, Merchant undertakes and agrees to defend, indemnify, and hold harmless City and any and all of City's boards, commissions, officers, agents, employees, assigns, and successors in interest and at the option of the City, defend by counsel satisfactory to the City, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys' fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Merchant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the acts, errors, omissions, or willful misconduct on the part of Merchant, contractors, subcontractors or invitees of Merchant, arising out of or relating to: (1) the use of the Monument and its facilities, (2) any repairs or alterations which Merchant may make upon the Premises, or (3) this Concession Agreement. Merchant's obligation to indemnify City and save City harmless shall include the retention and payment of reasonable legal counsel and investigative services and the payment of all other reasonable costs, expenses and liabilities from the first notice that any claim or demand is to be made in or has been made.

ARTICLE 21. DEFAULT

- **21.1. Default by Merchant.** The occurrence of any one or more of the following events shall constitute an **Event of Default** of this Concession Agreement by Merchant:
 - **21.1.1. Failure to Open.** The failure by Merchant to open for operation within twenty-four (24) months after the Concession Agreement Commencement Date or within a time period further extended in writing by City, City may cancel this Concession Agreement upon written notice to Merchant of its failure to open and City's election to cancel (see Section 4.2, page 3, for continuous operation requirements). Merchant shall then be subject to all Concession Agreement cancellation penalties provided herein;
 - **21.1.2. Failure to Pay Rent.** The failure by Merchant to make any payment of Rent pursuant, but not limited, to Section 1.4 and Article 6, or any other payment required to be made by Merchant under this Concession Agreement, as and when due:
 - **21.1.3. Abandonment.** Subsequent to the commencement of Merchant's business operations, the abandonment of the Premises by Merchant, as defined in California Civil Code section 1951.3:
 - **21.1.4. Unintended Use of Premises.** The use of the Premises by Merchant for purposes other than those specified in Section 1.6 and Exhibit E, or the failure by Merchant provide the goods and/or services as delineated in Section 1.6 and Exhibit E;
 - 21.1.5. Breach Of Concession Agreement Provisions. The failure by Merchant to observe or perform any of the covenants or provisions of this Concession Agreement to be performed by Merchant, other than as specified in or above, and where such breach can be cured, where such failure shall continue for a period of three (3)

calendar days after written notice thereof from City to Merchant specifying the nature of such failure or such longer period as is reasonably necessary to remedy such default, provided that Merchant shall continuously and diligently pursue such remedy at all times until such default is cured. To the extent permitted by law, such three (3) day notice shall constitute the sole and exclusive notice required to be given to Merchant;

- **21.1.6.** Insolvency. (a) the making by Merchant of any general arrangement or general assignment for the benefit of creditors; (b) Merchant becoming a "debtor" as defined in 11 U.S.C. ∋ 101or any successor statute thereto (unless, in the case of a petition filed against Merchant, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of Merchant's assets located at the Premises or of Merchant's interest in this Concession Agreement, where possession is not restored to Merchant within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Merchant's assets located at the Premises or of Merchant's interest in this Concession Agreement, where such seizure is not discharged within thirty (30) days. In the event that any provision of this Section is contrary to any applicable law, such provision shall be of no force or effect; or
- **21.1.7. False Statements.** The discovery by City that any financial statement given to City by Merchant, or its successor in interest or by any guarantor of Merchant's obligation hereunder, including, without limitation, statements given pursuant to Article 7 (page 14), was knowingly and materially false.
- **21.2. Remedies.** In the event of any Event of Default or breach of this Concession Agreement by Merchant, City may at any time thereafter, with or without notice or demand and without limiting City in the exercise of any right or remedy which City may have by reason of such default:
 - Termination Of Concession Agreement. City may terminate this 21.2.1. Concession Agreement and recover possession of the Premises. Once City has terminated this Concession Agreement, Merchant shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from Merchant: (1) the worth at time of award of damages of any unpaid Rent, expenses, or other sums due under this Concession Agreement that had been earned at the time of termination, to be computed by allowing interest at the rate set forth in Section 6.5.1 (page 13), but in no case greater than the maximum amount of interest permitted by law; (2) such amount as is necessary to compensate City for the detriment proximately caused by Merchant's failure to perform his obligations under this Concession Agreement, or which in the ordinary course things would be likely to result therefrom, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new merchant (whether for the same or a different use), and any special concessions made to obtain a new merchant; (3) the worth at time of award of damages of the amount by which unpaid Rent which would have been earned between the time of the termination and the time of award exceeds the amount of unpaid Rent that Merchant proves could be reasonably avoided, to be computed by allowing interest at the rate set forth in Section 6.5.1 (page 13), but in no case greater than the maximum amount of interest permitted by law; (4) the worth at the time of award of damages of the amount by which the unpaid Rent for the balance of the Term of this Concession Agreement after the time of the award exceeds the amount of unpaid Rent that Merchant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%); and (5) other amounts as may be permitted by law.
 - 21.2.2. Continuation Of Concession Agreement. City has the remedy described in California Civil Code section 1951 (City may continue Concession Agreement in effect after Merchant's breach and abandonment and recover Rent as it becomes due, if Merchant has the right to sublet or assign, subject only to reasonable limitations).

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Accordingly, if City does not elect to terminate this Concession Agreement on account of any Event of Default by Merchant, City shall be entitled to enforce all of City's rights and remedies under this Concession Agreement, including the right to recover the Rent as it becomes due.

- 21.2.3. Failure To Surrender Premises. If Merchant fails to surrender the Premises upon the termination of this Concession Agreement or should Merchant holdover beyond thirty (30) days following written notice to vacate, Merchant shall indemnify City for any liability or damages it may suffer as a result of City being unable to deliver the Premises to a new merchant in addition to any other liabilities accruing to City.
- **21.2.4. Other Remedies.** Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of California, include, but not be limited to, those rights as provided in California Civil Code section 1951.2, as amended. Unpaid installments of Rent and other unpaid monetary obligations of Merchant under the provisions of this Concession Agreement shall bear interest from the date due at the maximum rate then allowable by law. Enforcement of City's remedies shall not affect the rights of any bona fide conditional vendor, chattel mortgager, or other person having a security interest in Merchant's fixtures and equipment.
- 21.3. City's Cumulative Rights: No Waiver of Default. Except where otherwise provided, all rights, options and remedies of City contained in this Concession Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Concession Agreement. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. The acceptance by City of Rent or other payments with knowledge of the breach of any of the provisions of this Concession Agreement by Merchant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, provision, or condition of this Concession Agreement shall not be construed as to waiver of any subsequent breach of the same covenant, provision, or condition. The consent or approval of City to any act by Merchant requiring City's consent or approval shall not be deemed to waive or render unnecessary City's consent or approval to any subsequent similar acts by Merchant.
- **21.4.** Eminent Domain. If all or a portion of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or agreed purchase in lieu thereof, City shall have the option to either terminate this Concession Agreement as of the date when title to the Premises so purchased are taken, or reduce the Base Rent herein pro rata, in which case City is under no obligation to restore or reconstruct the Premises. Merchant may seek to claim damages, if any, to the extent such a claim is supported and consistent with the law. In the event that City relocates the business which occupies these Premises, City shall provide appropriate relocation assistance if required to pursuant to Section 22.632 of the City of Los Angeles Administrative Code and any subsequent amendments thereto.
- 21.5. Application of Funds. Any payments received by City under any provisions of this Concession Agreement during the existence or continuance of any Event of Default (including payments made to City rather than Merchant due to the existence of an Event of Default) shall be applied to Merchant's obligations in the order which City may determine or as may be prescribed by the laws of the State of California, and the retention by City of any funds from Merchant which are due but are not sufficient to cure any existing monetary default (whether or not any notice of such default shall have been given) shall not cure such default but only reduce Merchant's debt in such amount, notwithstanding any assertion by Merchant to the contrary.

- 21.6. Right of Re-Entry. If an Event of Default by Merchant has occurred and Merchant has abandoned the Premises, then City shall also have the right to enforce the provisions of California Civil Code sections 1980 through 1991. Merchant shall allow re-entry by City without hindrance, and City shall not be liable in damages or guilty of trespass. No re-entry or taking of possession of the Premises by City pursuant to this Section shall be construed as an election to terminate this Concession Agreement unless a written notice of such intention shall be given to Merchant or unless the termination hereof shall be decreed by a court of competent jurisdiction. For the purposes of this Article, Merchant's right to possession shall not be deemed to have terminated by efforts of City to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect City's interests hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by City without terminating Merchant's right to possession.
- **21.7. Default by City.** City shall not be in default unless City neglects or fails to perform or observe any of the covenants, provisions or conditions contained in this Concession Agreement on its part to be performed or observed within sixty (60) calendar days after written notice of default (or if more than sixty (60) calendar days shall be required because of the nature of the default, if City shall fail to commence work to cure the default within sixty (60) calendar days after notice and diligently pursue such work to completion).
- 21.8. Administrative Fees. Pursuant to the City Rules and Regulations attached as Exhibit C-1 and Exhibit C-2 and as may be amended from time to time by the Commission, the El Pueblo Department may provide written notice to Merchant of a violation of the use provisions and/or the Non-Encroachment Policy Regarding the Display of Merchandise. Consistent with the City Rules and Regulations, Merchant shall promptly pay to City the applicable service charge. Merchant acknowledges and agrees that such violations will cause City to incur costs and expenses not contemplated by this Concession Agreement, the exact amounts of which will be extremely difficult to ascertain, and that such service charge represents a fair estimate of the costs and expenses which City would incur having to pursue enforcement of the terms of the Concession Agreement. Merchant further agrees that such service charge shall neither constitute a waiver of Merchant's default with respect to such Concession Agreement violations, nor prevent City from exercising any other right or remedy available to City.

ARTICLE 22. MANDATORY CITY REQUIREMENTS

- **22.1. Standard Provisions for City Contracts.** Attached hereto and incorporated by reference into this Concession Agreement is Exhibit J entitled "Standard Provisions for City Contracts" ("**Standard Provisions**"). Throughout the Concession Agreement Term, Merchant shall comply with the Standard Provisions and applicable City Ordinances, and any amendments thereto. Any conflict between the provisions in the Articles of this Concession Agreement and the Standard Provisions shall be resolved in favor of the Articles of this Concession Agreement.
- 22.2. Merchant Evaluation. At the end of the Term of the Concession Agreement, the City will conduct an evaluation of the Merchant's performance. The City may also conduct reasonable annual evaluations of the Merchant's performance during the term of the Concession Agreement according to its Guidelines and Standards. (See Exhibit D for further provisions.) As required by Section 10.39.2 of the Los Angeles Administrative Code, or a successor code section, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the Merchant assigns to the Concession Agreement. A Merchant who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. The response of Merchant may include measures taken by Merchant to address and resolve any issues associated with a rating of "Marginal" or "Unsatisfactory" and Merchant's response may include any relevant documentation. The City shall retain Merchant's response. Upon reasonable written notice and at Merchant's expense, City shall provide Merchant a copy of City files concerning the Merchant's Evaluations. The City

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will use the final City evaluation, and any response from the Merchant, to evaluate proposals and to conduct reference checks when awarding other service contracts.

22.3. Ordinance Language Governs. In the event of a discrepancy between this Concession Agreement or Exhibit and the applicable ordinance language, as amended, the language of the ordinance shall govern.

ARTICLE 23. MISCELLANEOUS PROVISIONS

- **23.1.** Accord and Satisfaction. No payment by Merchant or receipt by City of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction and City may accept such check or payment without prejudice to City's right to recover the balance of such Rent or pursue any other remedy provided in this Concession Agreement. Merchant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Concession Agreement or imposed by any statute or at common law.
- **23.2. Adult Supervision.** Merchant will maintain or cause to be available adult supervision adequate to supervise and control visitors to the Premises.
- **23.3.** Approval for Displays. Merchant will secure approval from the Property Manager for all exhibits used on display in the Premises.
- **23.4. Binding Effect.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.
- **23.5. Brokers' Commissions.** Merchant hereby agrees to indemnify and hold harmless City for any claims for brokers' commissions asserted by any broker making a claim based on its representation and/or alleged representation of Merchant.
- **23.6.** Captions, Table of Contents, and Index. The titles or captions of all Articles, Sections, or paragraphs, as well as the Table of Contents and the Index contained herein, are for convenience and reference only, are not intended to define or limit the scope of any provisions of this Concession Agreement, and shall have no effect on the interpretation of any provision of this Concession Agreement.
- 23.7. City's Right Of Entry. City reserves the right at all reasonable times and upon reasonable notice to Merchant to enter the Premises to: (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or ground or underlying lessors, or, during the last twelve (12) months of the Concession Agreement Term, prospective Merchants; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises, the building or the Monument if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Building or Monument. Notwithstanding anything to the contrary contain in this Section, City may enter the Premises at any time to (A) perform services required of City; (B) take possession due to any breach of this Concession Agreement in the manner provided herein, and (C) perform any covenants of Merchant which Merchant fails to perform. Except as provided in Article of this Concession Agreement, City may make any such entries without the abatement of Rent and may take such steps as required to accomplish as expeditiously as reasonably possible and in a manner so as to cause as little interference to Merchant as reasonably possible. Merchant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Merchant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned thereby. For each of the above purposes, City shall at all times have a key with which to unlock all the doors in the Premises, excluding Merchant's vaults, safes and special security areas designated in advance

by Merchant. Only authorized City personnel shall have access to the keys and the keys shall be kept in a secure location only accessible by an electronic lock that records the identity, date and time that someone gains access to the location of the keys. In an emergency, City shall have the right to use any means that City may deem proper to open the doors in and to the Premises. Any entry into the Premises by City in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an actual or constructive eviction of Merchant from any portion of the Premises. During the final month of the Term of this Concession Agreement, City may display thereon appropriate notices relating to leasing of the Premises in such manner as not to unreasonably interfere with Merchant's business.

- 23.8. Conflict of Laws And Venue. This Concession Agreement shall be governed by and interpreted in accordance with the law of the State of California. Venue in any action arising out of this Concession Agreement will be proper only in the County of Los Angeles, State of California.
- 23.9. Corporate Resolution. If Merchant is a corporation and the signatories for Merchant are not two officers of the corporation as specified in California Corporations Code Section 313, , or a successor code section, then prior to or contemporaneous with the execution of this Concession Agreement, Merchant shall provide to City a current copy of its corporate resolution depicting the names, titles and legal signatures of the officer or officers of the corporation authorized to execute legal documents, including this Concession Agreement, on behalf of Merchant. Within thirty (30) days after Merchant's receipt of City's written request, Merchant shall provide to City an updated corporate resolution depicting such names and legal signatures.
- **23.10.** Covenants and Agreements: The failure of Merchant or City to insist in any instance on the strict keeping, observance or performance of any covenant or agreement contained in the Concession Agreement, or the exercise of any election contained in the Concession Agreement shall not be construed as a waiver or relinquishment for the future of such covenant or agreement, but the same shall continue and remain in full force and effect.
- **23.11. Days.** All references in this Concession Agreement to less than ten (10) days shall mean business days; otherwise, "days" shall mean calendar days unless specifically modified herein to be "business" or "working" days. All references to "notice" shall mean written notice given in compliance with Article 2). All references, if any, to "month" or "months" shall be deemed to include the actual number of days in such actual month or months.
- **23.12. Exhibits Incorporation in Concession Agreement.** All exhibits referred to are attached to this Concession Agreement and incorporated by reference as though fully set forth in the body of the Concession Agreement.
- 23.13. Force Majeure. Except as otherwise provided in this Concession Agreement, whenever a day is established in this Concession Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of disruption of service or brownouts from utilities not due to action or inaction of City, wars, insurrections, rebellions, civil disorder, acts of terrorism, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial inability excepted) ("Force Majeure"); provided, however, that nothing contained in this Section shall excuse Merchant from the prompt payment of any Rent or other charge required of Merchant hereunder. Neither party shall be liable for, and in particular Merchant shall not be entitled to any abatement or reduction of Rent or right to terminate by reason of, any such delays or failures or other inability to provide services or access under this Concession Agreement due to Force Majeure.

In the event a Force Majeure exists for more than thirty (30) continuous days, either party may elect to terminate the Concession Agreement and such termination shall not constitute a breach.

- **23.14. Memorandum of Concession Agreement.** A Memorandum of Concession Agreement, substantially in the form as that attached to this Concession Agreement as Exhibit K shall be completed and executed by both parties concurrently with the execution of this Concession Agreement. City may record such Memorandum of Concession Agreement. Merchant understands that this Concession Agreement may be considered a public document and, therefore, may be made available to members of the general public.
- **23.15.** No Partnership or Joint Venture. Nothing contained in this Concession Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between City and Merchant. Neither the method of computation of Rent nor any other provision contained in this Concession Agreement, nor any acts of the parties hereto, shall be deemed to create any relationship between City and Merchant other than the relationship of Landlord and Merchant.
- 23.16. No Relocation Assistance. Merchant acknowledges that it is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act (Government Code section 7260, et seq.), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C.A. ∋ 4601, et seq), or any other provisions of law upon termination of this Concession Agreement except in the event of condemnation of Merchant's Concession Agreement hold interest. Merchant therefore waives any claim to such assistance or benefits. Notwithstanding the above, Merchant may seek relocation assistance if any is available pursuant to City Rules and Regulations as attached in Exhibit C, and as may be amended from time to time by the Commission, or as provided by the Los Angeles Administrative Code Section 22.632(b), as may be amended from time to time by City.
- **23.17.** Partial Invalidity. If any provision or condition contained in this Concession Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Concession Agreement, or the application of such provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other provision and condition of this Concession Agreement shall be valid and enforceable to the fullest extent possible permitted by law.
- 23.18. Prior Agreement/Amendments. This Concession Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Concession Agreement, and no prior agreement or understanding, oral or written, expressed or implied, pertaining to any such matter shall be effective for any purpose. This Concession Agreement cannot be altered, changed, modified or added to, except as approved in writing by the City Council of City of Los Angeles and signed by the General Manager of the El Pueblo Department and by Merchant, or their successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Concession Agreement to the extent they are not incorporated herein.
- **23.19.** Quiet Enjoyment. Upon conformance by Merchant with the covenants, provisions, and conditions of this Concession Agreement, Merchant shall peaceably and quietly hold and enjoy the Premises for the Term of this Concession Agreement without hindrance or interruption by City, or any other person or persons lawfully or equitably claiming by, through, or under City, subject, nevertheless, to the provisions and conditions of this Concession Agreement.
- 23.20. Remodeling of the Monument. City reserves the right at any time or times during the Term of this Concession Agreement, to remodel, refurbish, alter, or expand all or any parts of the Monument.

- **23.21. Time.** Time is of the essence with respect to the performance of every provision of this Concession Agreement in which time or performance is a factor.
- 23.22. Filming: Merchant acknowledges and agrees that City, in its sole discretion, may use the Monument to accommodate commercial filming at the Monument. Merchant agrees that commercial filming that involves use of the Monument will not affect Merchant's Rent obligations under Article 6. Merchant further agrees that any revenue generated by the commercial filming that involves use of the Monument will be payable exclusively to the City; Merchant will have no right to any filming revenue for the use of the Monument. Any commercial filming within the Premises or that materially impedes access to the Premises shall be consistent with City Rules and Regulations attached in Exhibit C, and as may be amended from time to time by the Commission.

APPROVED AS TO FORM:	CITY:
CARMEN A. TRUTANICH, City Attorney	CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL
By: / Rome	PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION
Deputy City Attorney	
DATE: 7-14 -//	By: () () () ()
D/(12.	DATE: / (0/2)//
	DATE.
ATTEST: JUNE LAGMAY, City Clerk	
	By (Martin)
By: Otta Assortix	Secretary to the Board of Commissioners
Deputy	DATE: 4-30-11
DATE: 1/14/11	LA GOLONDRINA CAR
C-119123	MERCHANT: TNC. LTD.
*	By: VW PRES.
C. KUAN CONM. # DE 1912	DATE: 4 - 30 - 41
HOTARY PUBLIC - ENLIFORNIA CLOS ANGELES COUNTY COMM. EXPIRES AUG. 7, 2013	DATE: <u>(k</u> * 20 · <u>/ l</u>
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C. KUAN 3	DATE:
COMM. # 1860312 D HOTARY PUBLIC - CALIFORNIA D LOS ANGELES COUNTY O	
COMM. EXPIRES AUG. 7, 2013	MERCHANT:
	By:title
•	DATE:
	MERCHANT:
	Ву:
	title

DATE:___

Olvera Street Merchant Waiver and Release

Merchant represents that he or she has lawfully occupied Olvera Street Premises Space W-17/since at least 1999 pursuant to an authorized concession agreement. Some merchants on Olvera Street claim they are entitled to the provisions of a lease drafted in 1999, and further claim that the City has for many years sought to impose on the merchants a new concession agreement with terms, rents and common area maintenance fees that are unfair and unreasonable. On January 31, 2011, the Olvera Street Merchants Association (OSMA), the organization that represents a majority of the merchants, and 47 merchants filed a claim for damages against the City. The City denied the claim.

After many months of negotiations between the City and OSMA, a new concession agreement was approved by the El Pueblo Commission and the Los Angeles City Council.

In order to sign the new concession agreement, the Merchant must make clear his or her intention to accept the new concession agreement as the final and binding resolution of any dispute the Merchant has with the City relating to the Merchant's tenancy and/or lease claims to the Premises. Therefore, Merchant, and any successor in interest or assignee of Merchant, waives, releases and forever discharges the City of Los Angeles and its respective officers, employees and agents from any and all complaints, claims and liabilities of any kind or nature whatsovever, known or unknown, suspected or unsuspected which Merchant has or claims to have now or at any time hereafter relating to the Merchant's tenancy and/or lease claims to the Premises, including, but not limited to, the assertions made in the claim for damages filed against the City on January 31, 2011.

Waiver under Section 1542. Merchant expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance of such specific waiver of Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

A GOLONDANA CAKE, TAK. CID Merchant's Name

Merchant's Signature

Date: 6-30-11

INDEX

State of California)) ss.
County of Los Angeles)
On Los Angeles before before before before who proved to me of the basis of satisfactory evidence to be the person whose name is subscribed to the within nstrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the oregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature (seal) C. KUAN COMM. # 1860312 ROTARY PUBLIC - CALIFORNIA LOS ANGELES COUNTY
State of California) ss.
County of Los Angeles)
On before me
me on the basis of satisfactory evidence to be the person whose name is subscribed to the within nstrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the oregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature (seal)

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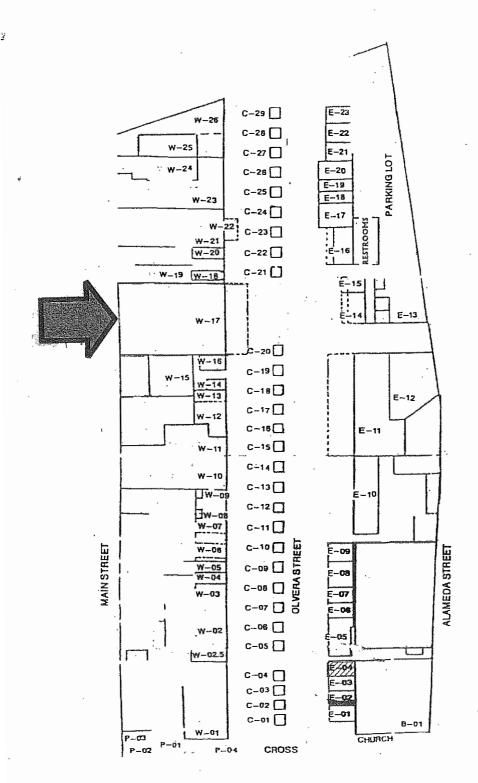
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DESCRIPTION EXHIBIT A

FLOOR PLAN FOR W- B OLVERA STREET CONCESSION EXHIBIT B

CASA LA GOLONDRINA W17B OLVERA STREET PELANCONIHOUSE

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EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT

RULES AND REGULATIONS FOR OLVERA STREET CONCESSIONAIRES FXHIBIT C

The following Rules and Regulations are established for Olvera Street and the Monument to make a pleasant, clean, safe and family-oriented environment to conduct a business. The Rules and Regulations are a part of the Concession Agreement and compliance is important. The Commission may amend these Rules and Regulations during open public meetings.

Concessionaires shall comply with all applicable laws, rules, regulations, and orders existing during the term of the concession agreement, including obtaining and maintaining all necessary permits, insurance and licenses.

Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and City building codes and regulations.

I. NOTICES:

All notices, payments, copies of insurance, etc., required to be filed with or given to EL PUEBLO shall be filed or given at the EL PUEBLO Property Management Office as identified in Article 1. Basic Provisions, Section 2.2. All decisions to be rendered by EL PUEBLO shall be made by its General Manager or his representative. All notices required to be filed or given to CONCESSIONAIRE shall be addressed to his/her home residence as indicated Article 1. Basic Provisions, Section 2.2.

II. DAYS AND HOURS OF OPERATIONS:

All concessions shall be operated at least six days each week. CONCESSIONNAIRE shall declare his one closure day, if any, in writing to EL PUEBLO. Mondays or Tuesdays are considered to be the most appropriate closure days. In no instance are the concessions to be closed on weekends, holidays or during EL PUEBLO special events. Although CONCESSIONNAIRE may hire employees, personal attention is also mandatory. Each individual named as CONCESSIONNAIRE (or each manager, if CONCESSIONNAIRE is a corporation) shall devote substantial and on-going personal ON-PREMISES attention to the operation of the business. (Concession Agreement, Article 4, Merchant's Conduct of Business, Item 4.3)

CONCESSIONNAIRE shall operate his concession an adequate number of hours each day to meet public demand. EL PUEBLO may establish given hours and may vary said hours seasonally or otherwise.

III. APPEARANCE AND CONDUCT:

The following provisions apply to all CONCESSIONNAIRES and their employees. Non-compliance by an employee shall be deemed non-compliance by the CONCESSIONNAIRE.

- A. All CONCESSIONNAIRE must maintain a neat and clean appearance at all times.
- B. Wearing of Mexican-style period costumes is required. Non-compatible clothing is prohibited.

- C. Courtesy shall be practiced at all times.
- D. Prices must be posted at all times for all merchandise.
- E. Cash register receipts shall be recorded at time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total which shall be sealed in a manner approved by El Pueblo, and having such other features as required and approved by El Pueblo.
- F. Public complaints should be settled by CONCESSIONNAIRE as quickly and as amicably as possible. Merchandise exchanges and refunds are encouraged.
- G. The EL PUEBLO Administration is empowered to arbitrate all customer disputes and its decision shall be binding.
- H. CONCESSIONNAIRE shall conduct his business in a manner consistent with the objectives of a park atmosphere and "customer is always right" service. Aggressive selling is prohibited.
- I. CONCESSIONNAIRE will maintain or cause to be available adult supervision adequate to supervise and control visitors to the premises and shall not permit anyone not otherwise connected with the concession to be on the premises.
- J. Drinking of intoxicants by CONCESSIONNAIRES or employees during working hours is prohibited.
- K. Nothing is more important to the City of Los Angeles than the safety and security of its employees, customers, and visitors. El Pueblo is committed to maintaining El Pueblo free from violence or threats of violence. Threats, threatening behavior, or acts of violence against a CONCESSIONAIRE, City employee, a customer, a visitor, or any other individual cannot and will not be tolerated. All reports of El Pueblo violence will be taken seriously and will be investigated promptly and thoroughly by the Administration.
- L. It is prohibited to harass and discriminate on the basis of race, religion, gender, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, and gender identity, source of income, or Vietnam era veteran's status, or other protected status under applicable law.

IV. MERCHANDISE:

CONCESSIONAIRE will provide visitors with high-quality experience that exemplifies the vibrancy and conviviality of the historic ambiance of the City of Los Angeles' birthplace. Olvera Street is part of the Los Angeles story. In 1926, Christine Sterling's saved the Avila Adobe from demolition and started the first themed tourist destination in California, the Olvera Street Mexican Marketplace. The no-bid Concession Agreements were awarded to established 1999 Olvera Street concessionaires to preserve the ambiance of a Mexican Marketplace. To restore and protect the Mexican Marketplace, the Department will have the authority to approve the nature, type, and quality of merchandise to be offered by concessionaires on Olvera Street. All merchandise must support a Mexican-themed marketplace and the tradition that Christine Sterling instilled by creating opportunities for Mexican Artisans. A Mexican Artisan is defined as, a craftsperson who continues to practice the tradition reflective of their religion, gender, occupation and recreation, region, ethnicity, age, and other ways that define as part of their heritage from generation to generation. Therefore, all CONCESSIONAIRES will follow their individual Merchandise Plan as established by the Merchandise Policy for their Concession as approved by the General Manager and made a part of their concession agreement.

V. VENDING MACHINES AND INAPPROPRIATE EQUIPMENT

CONCESSIONAIRE will be allowed to operate existing Automated Teller Machines (ATMS) or cash dispenser machines in their Premises until ATM or cash dispenser machines installed by City on Monument property are operational. After the ATM or cash dispenser machines installed by City are operational, City will give CONCESSIONAIRE 30 days notice to remove all ATMs and cash dispenser machines from their Premises. Free standing mechanical, self operating or automatic vending machines, including but not limited to soda and water machines, arcade or game machines in, on, or about the Premises are not allowed and must be removed.

VI. NON ENCROACHMENT

Per the direction of El Pueblo de Los Angeles Historical Monument Commission Authority, the General Manager or City representative is directed to conduct regular inspections of the El Pueblo de Los Angeles Historical Monument (Monument) property to verify compliance with Encroachment Rules and Los Angeles Municipal Code (LAMC) Section 57.33.11 fire code requirements, to ensure park safety for visitors, businesses and staff. Should a business encroach and a violation occurs, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If a CONCESSIONAIRE continues to display merchandise in violation of the Non Encroachment Policy, the CONCESSIONAIRE shall promptly pay to the Department the applicable service charge consistent with the Non Encroachment Policy.

VII. PUESTO, STORE AND RESTAURANT MAINTENANCE REQUIREMENTS:

CONCESSIONNAIRE shall be responsible for the cleanliness of their premises. EL PUEBLO shall regularly sweep and wash the brick surface of Olvera Street, but CONCESSIONNAIRES shall also be responsible for sweeping adjacent sidewalks when necessary. Rubbish containers on Olvera Street shall be for the exclusive use of the public. CONCESSIONNAIRES shall only us offstreet containers, such as EL PUEBLO'S trash compactor.

VIII. FILMING:

El Pueblo Management shall not allow commercial filming, including but not limited to motion picture, television or commercial photography, in a Concessionaire's Premises.

IX. NO RELOCATION ASSISTANCE

CONCESSIONAIRE acknowledges that their business is not entitled to relocation assistance or any other benefits under the California Relocation Assistance Act. No form of relocation assistance is available to a Merchant other than what is authorized by City law at the time of the relocation

X. RESOURCE CONSERVATION:

A. _Environmental Conservation Program:_Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the City. Accordingly, Concessionaire shall prepare and execute a program, subject to the prior written approval of the City, designed to reduce environmental impacts that result from concession operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, pest management, grease removal and disposal, hazardous materials handling and storage, and air quality. Specifically, the program must include the following:

Recycling and Beverage Container Programs: The Concessionaire shall implement a
source reduction and recycling program designed to minimize concession and patron use
of disposable products, per Public Contract Codes Sections 12161 and 12200 et seq.
Reusable and recyclable products are preferred over "throwaways". Where disposable
products are needed, products that have the least impact on the environment will be
selected. No Styrofoam containers or other non-biodegradable containers are to be used
or sold by Concessionaire. The use of "post-consumer" recycled products is encouraged
wherever possible.

The Concessionaire shall participate fully in the California beverage container redemption/recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each contract year, Concessionaire and City shall review items sold, and containers or utensils used or dispensed by Concessionaire, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

2. Water and Energy Conservation: The Concessionaire shall implement water and energy conservation measures. As new technologies are developed, Concessionaire shall explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, and/or reduced impacts on the environment.

XI. FIRE AND SAFETY PRECAUTIONS:

- A. Fire extinguishers must be kept in all locations where required, be accessible and maintained in good repair.
- B. The storage or accumulation of combustible merchandise or materials is prohibited.
- C. EL PUEBLO may conduct periodic and unannounced inspections and compliance with its findings is required.
- D. Merchandise must be kept away form automatic sprinkler heads for a distance of at least 18" in all directions.
- E. Merchandise must not be hung from pipes that supply water to automatic sprinkler heads.
- F. Merchandise must be kept away form exposed light bulbs. (Such as sun shades hung by Puestos).
- G. CONCESSIONNAIRE must comply with instructions of authorized representatives of the City Fire Department.

XII. OTHER PROVISIONS:

- A. CONCESSIONNAIRES shall refrain from the use of personal radios and television sets for programs not compatible with Olvera Street objectives. Every effort shall be made to minimize objectionable noises. Volume of any electronic device shall be kept at such a level so as not to create discomfort to other merchants or the public. EL PUEBLO shall be the judge of the appropriate volume and location of such devices.
- B. CONCESSIONNAIRES area responsible for all necessary licenses and taxes pertaining to their businesses and records of same.
- C. CONCESSIONNAIRE shall pay any and all taxes levied by any legally constituted government agency.

- D. Retail prices established for the general public shall be the price charged to all. No commission or gratuity shall be paid to any person furnishing customers.
- E. No signs, names, place cards or advertising matter shall be inscribed, painted or affixed upon said premises, circulated or published without EL PUEBLO'S prior written consent.
- F. CONCESSIONNAIRE shall dismiss undesirable employees upon request of the El Pueblo General Manager.
- G. ONE STAFF PARKING space will be provided to the CONCESSIONAIRE at a thirty-five percent (35%) discount off the then-prevailing rate in the facility (subject to change and as availability of the City parking lots). The additional rent payable for this parking permit includes the 10% surcharge imposed by the City of Los Angeles parking occupancy tax (Ordinance No. 165.949). Concessionaire will be billed monthly in advance for this parking. Public parking at the posted rates may be obtained in the Monument on a space available basis.

EXHIBIT C-1 NON ENCROACHMENT POLICY

Non-Encroachment is defined as the area of rented space or premises the Concessionaire is allowed to conduct business as described in the Concession Agreement. Encroachment is defined as entering or moving merchandise into an area beyond the usual or proper limits (defined rental space of the business or public footpaths).

Per the direction of El Pueblo de Los Angeles Historical Monument Commission Authority, the General Manager or City representative is directed to conduct regular inspections of the El Pueblo de Los Angeles Historical Monument (Monument) property to verify compliance with Encroachment Rules and Los Angeles Municipal Code (LAMC) Section 57.33.11 fire code requirements, to ensure park safety for visitors, businesses and staff.

Compliance with the Encroachment Rules ensure that visitors and shoppers can pass freely between shops and businesses in the public right of way and avoid potentially unsafe walkways and clearances. Most importantly, compliance ensures adequate ingress and egress for emergency personnel and evacuation of the public during an emergency.

East Side Olvera Street Businesses

- No merchandise may be hung or displayed more than eighteen inches (18") from the surface wall
 of any Puesto along an aisle facing Olvera Street per LAMC Section 57.33.11. No merchandise
 may block access to any doorway or stairway, or hang from surface walls of any building.
- No merchandise may be displayed in, on, or around planter area, fountains, or common areas.
- Tables, rack, poles, and similar items, may be displayed eighteen (18") inches from the walls facing Olvera Street, on both the east and west aisles. Racks and poles must be secured to prevent tipping over in the event of an emergency, and to prevent injury to the public. Racks and poles must be stored at the end of business each day.
- For those businesses not located at the end of a row, merchandise may be hung directly against the sidewalls, three (3') feet away from fire life safety equipment. Passage between the Puestos/businesses **must not** be impeded.
- For those businesses located at the end of a row, merchandise may be hung directly against sidewlls under the roof line, from the side accessible to the public.
- No soft canopies are permitted without prior written approval from El Pueblo's General Manager.
 Any approved soft canopy must be seven (7') feet high, and flame retardant as approved by LAMC Section 57.33,11.

Center Puestos

- No merchandise may be hung or displayed more than eighteen inches (18") from the east facing surface wall of any center business along Olvera Street. No merchandise may be hung or displayed more than twenty-four inches (24") from the west facing surface wall per LAMC Section 57.33.11.
- For those businesses not located at the end of a row, merchandise may be hung directly against the sidewalls, three (3') feet away from fire life safety equipment. Adequate room between puestos is required to permit safe passage.
- For those businesses located at the end of a row, merchandise may be hung directly against the sidewalls under the roof line, from the side accessible to the public.
- Tables, rack, poles, and similar items, may be displayed eighteen (18") inches from the walls facing Olvera Street, on both the east and west aisles. Racks and poles must be secured to prevent tipping over in the event of an emergency, and to prevent injury to the public. Racks and poles must be stored at the end of business each day.
- No merchandise may be displayed in, on, or around planter area, fountains, or common areas.

Western Olvera Street Bus sses

No merchandise may be hung or displayed or block access to any doorway, railing or stairway, or hang from any surface wall of any building per LAMC Section 57.33.11.

No merchandise may be displayed in, on, or around planter area, fountains, or common areas.

Soft canopies are not permitted per LAMC Section 57.33.11.

Doors must fold flat against exterior walls and must not be left ajar or at an angle to display merchandise.

Production and Special Event Companies

Production companies, special event producers and others renting Monument facilities are subject to specific terms and conditions set-forth in executed contracts. The agreements delineate specific Monument areas paid for by these production and special event companies. If a company encroaches beyond the permitted area(s) staff will inform the company to comply and stay within the contracted "foot-print" to keep public footpaths clear and safe, or they will be charged additional rental fees and possibly cited by the Los Angeles Fire Department.

Additionally, any alterations to existing structures that includes nailing, screwing or painting of Monument property is strictly prohibited unless previously authorized by the Monument. Contracted companies are subject to an additional fine for each violation.

Violation Process:

Should a business encroach and a violation occurs, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If, however, the concessionaire/business does not comply with a request to correct the encroachment, the concessionaire will receive a written warning notice to correct the encroachment violation. The business owner will have five (5) days after receipt of the warning letter to correct the encroachment.

If the concessionaire does not correct the violation on or before the sixth (6th) day from receipt of the written warning, the department will issue a 2nd written notice of the violation and the business owner will be required to pay to the City an administrative fee for the cost to enforce the encroachment violation incident. The estimated administrative fee is one hundred dollars (\$100.00) per violation.

The business owner acknowledges and agrees that such enforcement of the encroachment will cause the City to incur costs and expenses, and the exact amounts of which, will be difficult to ascertain for the term of the concession agreement, and that such administrative fees represents a fair estimate of the costs and expenses the City would incur by reason of enforcement.

If the business/concessionaire fails to remove or adhere to the Encroachment Rules on the seventh (7th) day of the violation, a 3rd written notice to the business owner will be issued and the business owner will be required to pay an additional one hundred dollars (\$100.00) per each violation.

If by the tenth (10th) day, the business owner continues to be in violation of the Encroachment Rules, the business owner will be in violation of the Concession Agreement Section 18.2.1 and be charged for cost of such work to remove the merchandise or materials that are causing unsafe conditions.

EXHIBIT C-2 EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT

MERCHANDISE POLICY FOR OLVERA STREET CONCESSIONS

It is the objective of the City of Los Angeles El Pueblo de Los Angeles Historical Monument Department (Department) to provide visitors with high-quality experience that exemplifies the vibrancy and conviviality of the historic ambiance of the City of Los Angeles' birthplace. It is the policy of the Department to approve the nature, type, and quality of merchandise to be offered by businesses on Olvera Street that support a Mexican-themed market and the tradition that Christine Sterling instilled by creating opportunities for Mexican Artisans. A Mexican Artisan is defined as, a craftsperson who continues to practice the tradition reflective of their religion, gender, occupation and recreation, region, ethnicity, age, and other ways that define them as learned from their family or community that has been part of their heritage over a long period of time over three or more generations.

All concession agreements for Olvera Street require a Merchandise Plan. The El Pueblo de Los Angeles Historical Monument Authority has authorized the General Manager to approve all Merchandise Plans to maintain diversity, quality and quantity of products and services. Olvera Street has a unique identity achieved through a combination of merchandise, presentation, ambience and services all working together. In this regard, the "one of a kind" businesses play a vital role in creating that sense of a unique historic district distinction.

Due to the uniqueness of each tradition, and the many layers of ethnicity, race and culture over centuries, it is impossible to create a comprehensive list for the term of the Concession Agreement for the next twenty years that name every product and service reflective of Mexican and Latin American folk-art. Therefore, Olvera Street Concessionaires can apply to the General Manager for the right to sell any new Mexican themed product or service not reflected in their Merchandise Plan on file with Property Management for the first twenty years of the Concession Agreement term. Each time a request for a new product or service is requested, the Concessionaire must include a validation statement to the General Manager outlining the origin of the product or service and a brief explanation as it how relates to Mexico or Latin America. The Property Management Division concession file will contain approvals for any addition or deletion of product as listed in the Merchandise Plan on file in 2011. If the Concession Agreement is renewed in 2041, a new Merchandise Plan will be required.

Priority will be given to products and services that foster awareness, understanding, and appreciation of Mexican products and services that interpret the traditions and culture of Mexico and Latin America.

Background:

The historic beginnings of Olvera Street as a Mexican Marketplace began after 1930. However, before 1930 the street had historic significance to the Gabrieleno Yang-na Village, the first Spanish settlement (1818-1822) in Los Angeles County, and for a short period rule under the country of Mexico (1822-1848). After 1848 through the 1920s the flow of history and contributions of Chinese, Italian, French, Jewish, African-Americans, and many other ethnic groups who settled in Los Angeles and are associated with the development of this great City as interpreted through our programs, exhibits and museums. Olvera Street is part of the Los Angeles story that starts with Christine Sterling's drive to save the Avila Adobe in 1926. By the 1920s the area today known as the Plaza and Olvera Street had suffered from decline due to the relocation of many businesses further south to the emerging new downtown business area. With

the help of Harry Chandler, publisher of the LOS ANGELES TIMES, and several other prominent business and professional leaders of the community, Ms. Sterling created a Mexican Marketplace on Olvera Street into a colorful landscape reminiscent of "Old Mexico" to reinvigorate the area into a lively Mexican-themed marketplace. She brought fiestas and Mexican traditions with the help of the Mexican-American community. Colorful handcrafted Mexican products were sold and artisan demonstrations created an opportunity for the visiting public to experience the Mexican culture. The Mexican Marketplace concept became a popular tourist destination peaking in the 1980s.

Merchandise Plans have been a requirement for all businesses on Olvera Street for over 50 years. The Merchandise Plans must be enforced by the Department to ensure Olvera Street is maintained as a viable example of a Mexican themed marketplace, forever preserving the market flavor and Mexican atmosphere and adjoining buildings envisioned by Christine Sterling. The Commission authorizes the General Manager to give exclusivity to businesses that offer handmade goods that utilize artisan techniques in front of the public that demonstrate their unique craft. The Commission recognizes that single product/service authority, protects individual craftperson's intellectual property and promotes the vision Christine Sterling provided in the 1930s of Mexican Marketplace. Businesses that copy the product from authorized craftspersons and cast them as hand-made items to sell in their businesses will be in violation of the Merchandise Policy. The Merchandise Policy will be strictly enforced.

Today, tourists from around the world continue to visit Olvera Street to enjoy the Mexican Marketplace theme. However, some of the distinct characteristics of Christine Sterling's vision have been blurred by an overwhelming flood of retail goods not connected to Mexican arts or products. Several factors over the last 50 years have lead to the decline in the Mexican Marketplace theme:

- 1. In 1964, the addition of several center puestos bifurcated the street and eliminated the open air walkway;
- 2. Many craftspeople and families from the 1930s sold their businesses in the early 1960S and 1970s to individuals that were not Mexican artisans (candlemaker, blacksmith, glass blower, newsprinter, furniture maker, confectioner, etc);
- 3. Merchandise plans that were in place during Christine Sterlings' management were not enforced after her death in 1964;
- 4. Items that are not Mexican themed or Mexican made are displayed more prominently than Mexican handcrafts; and
- 5. Business owners copy/compete to sell the same merchandise as their business neighbors—at reduced prices.

Individual Olvera Street Merchandise Plan Requirements:

The City is cognizant that every retailer is challenged with how to effectively plan and execute unique store-level assortments (mix) that match local consumer demand. However, research has shown and the success of the Mexican Marketplace from the 1930s to the 1980s indicate profit levels can be maintained through specialized mixed merchandise plans. The City recognizes there is a delicate balance that must be facilitated in order for each concession to retain a profit. The regulation and enforcement of a retail merchandising mix plan for all Olvera Street businesses will allow each concession to specialize in a store theme free of competition. The City will work with each business to intelligently build assortments of products that capture and target local and international customers and allow individual businesses to thrive. Businesses that desire to continue selling non Mexican items or non Latin themed items will be allowed to continue to sell only those items, any requests for additional non Mexican or non Latin themed items will be denied. Each Concessionaire will have 30 days to provide to the General Manager

an itemized list of products and services carried before June 1, 2011 and a Merchandise Plan that will become an Exhibit C in the Concession Agreement.

General Guidelines

There is value for businesses when there is a balanced mix of retail choices for customers. Olvera Street is located in an ideal setting. Positioned across from Union Station and the 101 Freeway, the gateway to the downtown business district, EI Pueblo has some of the oldest remaining intact historic buildings in the City of Los Angeles — there is a particular appeal and character that visitors enjoy that sets this Mexican Marketplace apart from other cities. Thus, each concession will have a role in assuring this independent retail base will be preserved as a historic destination for the general public to enjoy and for businesses to profit. Therefore, the General Manager will ensure there is a balanced mix of retail opportunities for Olvera Street Concessionaires and that the following basic guidelines will be implemented by the Department:

- 1. A quantity of tenants by category of Mexican merchandise that reinforces a "Theme" for each unique category;
- 2. A merchandise theme that has one or more of the following factors: relevance to Mexico, location of the concession, contractual obligations, unique physical features, evolving usage, public policy decisions and economic forces, including quantities of existing space by type of use or merchandising category;
- 3. A critical mass of retail diversity that achieves its identity by the creation of adjacencies or, geographic points of concentration reflective of Mexico or South American merchandise (specifically handcrafted items), thereby causing Olvera Street to stand out in customers' minds as a distinct unique Mexican Marketplace that is not replicated anywhere else in the City of Los Angeles;
- 4. A unique identity achieved through a combination of merchandise, presentation, ambience, and service all working together, including packaging, shelving, bins, and counters of natural materials supporting the 1930s Mexican Marketplace theme. In this regard, the "one of a kind" businesses on Olvera Street will play a vital role in the Retail Merchandising Mix Plan which is essential in creating that sense of unique Mexican distinction for visitors:
- 5. A mix of local, regional, and national products that is consistent with the characteristics of Olvera Street's business personality; and
- 6. The contribution that each unique Olvera Street business can make not only by supporting the Mexican Marketplace theme to improve Olvera Street itself but also by creating a stronger message overall by offering a variety of experiences and shopper opportunities.

Elements of an Individualized Plan for Each Olvera Street Business

Olvera Street businesses are a vital component to the appearance and experience of an "Old Mexico" flavor for visitors. The Olvera Street concession program is an integration of combined efforts with the El Pueblo museums, educational programs, special events, docent activities and entertainment which contribute to the interpretation and span of time from American Indian, Spanish, and Mexican occupation to 1932 when David Alfaro Siqueiros painted the America Tropical mural on what is known today as the Italian Hall roof wall. Olvera Street Concessionaires must have, or be willing to, develop the special knowledge, experience, skills and abilities appropriate for a business that reflects a Mexican Marketplace theme. Therefore, each individual Olvera Street business will be required to submit and adhere to their plan as specified below:

1. A statement of the theme of your business and how the theme relates to a Mexican Marketplace or Latin American culture or an "OPT-OUT" Statement from the

Concessionaire indicating their desire to continue selling non Mexican items or non Latin themed items. The "OPT-OUT" statement be on file in the Property Management Division Concession file and the business will be audited monthly to ensure the business only sells those items on the inventory list. Any request for additional non Mexican or non Latin themed items will be denied by the General Manager.

2. List of all products, merchandise or services for your business. The following are acceptable categories of merchandise and products reflective of Mexican and Latin American cultures: wood/leather/metal furniture, toys, dolls, fine linens, weaver, painting, puppets, carving, stitching, sewing, lacing and beading, jewelry, pottery, silver work, leather work, tinsmithing, Huichol yarn pictures, Amate paper designs, masks, skeletons or calaveras, stamp design in the traditional ancient Mexico and Asian format, gourd designing, musical instruments, henna and body art, needlework, metal work, hammock making, Papel Picado, Oio de Dios, Paper mache, Andrean textile design, flowers, candy, bottled sauces, spices, herbs, bottled drinks from Mexico, novelty items that reflect Olvera Street, clothing, shoes/boots and purses, theatrical and dance wear, packaged food, paintings, kitchen tools and tableware, saddle blankets, hats, wall décor. lamps and shades, plants, cow skulls and mounted horns, animal hides, sporting goods, garden furniture and goods, wreaths, music, saddles, mandellas, baskets, bells, gourds, chile ristras, rugs, books, throws and pillows, horse headstalls/breastcollars/reins/whips. games, textiles, tile, fencing/gates, canes/walking sticks, photography, money clips/key chains, vests/jackets/belts, religious novelties).

*This list is not inclusive; businesses may submit items not listed above if they can document a connection to a Mexican or South American culture.

- 3. Approval from the El Pueblo General Manager before a new product, merchandise or service is sold in order to maintain and enhance Olvera Street as a vital commercial hub and cultural destination in the downtown metropolitan area.
- 4. Prices posted on each item or printed signage above products, merchandise or service with lettering preapproved by the General Manager. All containers, shelving, bins and displays must be of natural material (woods, straw, basket, cloth, metal, paper, or rope) when in public sight. Presentation and décor should be displayed and portrayed in a manner keeping with a Mexican Marketplace theme.
- 5. Business owners and employees must be dressed in Mexican style clothing when open for business and in sight of the visiting public.
- 6. Merchandise must be "family friendly" and appropriate in a public park setting.

Merchandise Policy Violation Process:

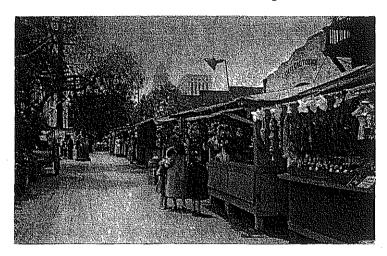
Should a business sell an unauthorized product or service that is not approved by the General Manager or identified in their Merchandise Plan on file with the Property Management Division, a City representative will verbally request the business to correct the violation. If the business complies with the request, the Monument will take no further action. If, however, the concessionaire/business does not comply with a request to correct the sale of an unauthorized product or service, the concessionaire will receive a written warning notice to correct the violation. The business owner will have five (5) days after receipt of the warning letter to correct the sale of an unauthorized product or service.

If the concessionaire does not correct the violation on or before the sixth (6th) day from receipt of the written warning, the department will issue a 2nd written notice of the violation and the business owner will be required to pay to the City an administrative fee for the cost to enforce the violation incident. The estimated administrative fee is one hundred dollars (\$100.00) per violation.

The business owner acknowledges and agrees that such enforcement of the Olvera Street Merchandise Plan will cause the City to incur costs and expenses and jeopardize revenue for other businesses on Olvera Street, and the exact amounts of which, will be difficult to ascertain for the term of the concession agreement, and that such administrative fees represents a fair estimate of the costs and expenses the City would incur by reason of enforcement.

If the business/concessionaire fails to remove or adhere to the Merchandise Policy on the seventh (7th) day of the violation, a 3rd written notice to the business owner will be issued and the business owner will be required to pay an additional one hundred dollars (\$100.00) per each violation.

If by the tenth (10th) day, the business owner continues to be in violation of the Merchandise Policy, the business owner will be in violation of the Concession Agreement.



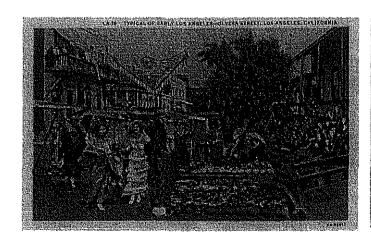




EXHIBIT D ANNUAL CONCESSIONAIRE PERFORMANCE EVALUATION STANDARDS AND GUIDELINES

At the start of each new concession agreement execution date or at the beginning of each calendar year, the Department will evaluate the performance of the entity. A concessionaire must meet all terms and conditions of the concession agreement under these categories to be rated in COMPLIANCE. Any deviation will result in a NONCOMPLIANCE rating. All other categories permit numerical ratings ranging from three to twenty points and fall within a scale of "EXCELLENT, SATISFACTORY, OR NEEDS IMPROVEMENT."

The rating for the overall evaluation shall be determined by the percentage score rating unless a concessionaire is rated NONCOMPLIANCE or UNACCEPTABLE in any category. The NONCOMPLIANCE or UNACCEPTABLE will result in the termination of the concession/contract and the end of the twenty year term (20).

The standard for the category ratings are as follows:

- An "Excellent" rating in a category shall be given when a concessionaire always meets and frequently exceeds the requirements of the agreement/contract obligation for that category.
- A "Satisfactory" rating in a category shall be given when the concessionaire consistently meets the requirements of the agreement/contract obligation for that category.
- A "Needs Improvement" rating in a category shall be given when the concessionaire is deficient in the minimum requirements of the agreement obligation for that category on more than one occasion or when the concessionaire fails to correct a deficiency after notification.

The following examples are meant to assist the rater in illustrating the differences in the rating scores:

"Excellent" — The agreement/contract requires the concessionaire/contractor's operating hours Tuesday through Sunday from 10: A.M. until 9:00 P.M., and closed on Mondays. The concessionaire was open daily from 10:00 A.M. until 10:00 P.M., one hour daily above and beyond the required operating hours.

"Satisfactory" - The concessionaire/contractor's was operating daily from 10: A.M. until 9:00 P.M and closed on Monday, and met the requirements as stated in the concession agreement.

"Needs Improvement" — The concessionaire was not open daily from 10: A.M. until 9:00 P.M. They were open from 8:00 AM to 3:00 PM Monday through Saturday. Concessionaire was notified in writing and given a notice to correct.

"Non Compliance/Unacceptable"- The concessionaire was not open daily from 10: A.M. until 9:00 P.M. They were open from 8:00 AM to 3:00 PM Monday through Saturday. Concessionaire was notified three times in writing and given a notice to correct. Concessionaire disregarded notice to correct and continues to not comply with their contractual requirements,

CONTRACTUAL OBLIGATIONS

This section covers all financial and operational aspects of the concession agreement.

Rental Payment -The rater must evaluate the concessionaire's payment record preceding year. The rental payments must be current and the correct amount. Rental payments are considered late after the 1st of every month.

Maintains a Register Journal/\$ Trail-Verify a cash register tape is used for all transactions according to the terms of the contract.

Bonds/Insurance-The rater must verify that all bond and insurance requirements are met as stipulated in the contract (i.e., performance bond, liability, automobile insurance, construction, payment bond, and fire insurance)

Compliance with Rules and Regulations-The rater verifies the concessionaire is adhering to Rules and Regulations as adopted by the Commission and the concession agreement. Any violation will result in a lower score.

Concessionaire Presence (or each manager, if a corporation) shall devote substantial and on-going personal ON-PREMISES attention to the operation of the business. (Per Article 4, Merchant's Conduct of Business, Item 4.3).

BUSINESS OPERATIONS

This section covers compliance with the concessionaire's the Rules and Regulations as stated in the concession agreement.

Operating Days and Hours-The rater verifies the concession has been open as stipulated in the Merchandise Plan.

Merchandise Policy-The rater verifies that goods and services for sale are authorized in the Merchandise Plan,

Appropriate Signage/Advertising -The rater evaluates the appropriateness of the signage for location, accuracy, professionalism, and maintenance and verifies prior approval by the General Manager?

Compliance with Non-Encroachment Policy— The rater verifies the concessionaire is adhering to Encroachment Rules, identified in Exhibit G). Any violation will result in a lower score. More than three violations and the concessionaire will receive a noncompliance/unacceptable score

MAINTENANCE

This Section covers the maintenance of the premises and adjacent areas in a clean, safe, wholesome, and sanitary condition, and in compliance with any and all laws, general rules, or regulations of any government authority during the term of the operating agreement/contract.

Maintenance Project Compliance-Rater determines if any repairs to the facility have been performed and verifies approval of the repairs or improvements by the General Manager. If a repair or improvement has not been preapproved, concessionaire may receive a noncompliance/unacceptable score.

Fire Safety Prevention-Rater checks fire extinguishers to see if they are visible and adequately marked, contain the proper chemical, and have been serviced annually. Look for evacuation routes posted in conspicuous locations, check fire exits for demarcation—free from debris and hazards. Make sure there are no explosives or hazardous goods, merchandise, or materials kept, stored, or sold in proper containers?

Utilities, Sewer, Water and **Trash-Meters** are kept free of litter and debris, uncluttered, and properly illuminated. Any outstanding reimbursement payments to the City for water, gas or electricity has been settled.

Interior/Exterior Cleanliness-Rater verifies there are no violations for garbage/trash containers (exterior), unclean doorways, walkways and graffiti.

After the evaluation, the rater reviews the score with the concessionaire. The rater then informs the concessionaire that a copy of the evaluation will be sent in the mail and within 14 days of receipt, the concessionaire is required to submit the signed form to El Pueblo de Los Angeles Historical Monument, 125 Paseo de la Plaza, Suite 300, Los Angeles, CA 90012, attention to the General Manager for processing.

If a dispute arises, the concessionaire may submit in writing their dispute. Final arbitration will be with the General Manager within 14 days of receipt of response. If the concessionaire fails to respond or turn in the completed evaluation, the evaluation will stand and be finalized with the signature of the General Manager.

ANNUAL PERFORMANCE EVALUATION EXHIBIT D-1

EXHIBIT E USE OF PREMISES CONCESSIONAIRES'S MERCHANDISE PLAN

MERCHANDISING PLAN "OPT-OUT" STATEMENT BY THE CONCESSIONAIRE

I,	Department and attached and verified by e selling non Mexican items or non Latin
DATE: 6.30-11	DATE:
By: _ A COOLONDLINA CASE, INDIVIDUAL JNC.	By:

FACILITY MAINTENANCE PROGRAM EXHIBIT F

During the term of this contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than FIVE (5) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

In the event that Concessionaire desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, required accessibility barrier removal work, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively "Alteration(s)"), the approval in writing of City shall be obtained prior to the commencement of any Alterations. City shall dictate the plan approval process.

- A. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks.
- B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this contract. Such maintenance shall conform to City standards. For the purposes of this contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and

equipment in a good City of repair, as well as to preserve them for their intended purpose for an optimum useful life.

Pest inspections shall be performed regularly. Concessionaire will remedy all pest infestations in a timely manner. Concessionaire shall provide to City copies of all pest inspection reports or other professional assessments of the condition of the facilities.

Should Concessionaire fail, neglect, or refuse to undertake and complete any required maintenance, City shall have the right to perform such maintenance or repairs for Concessionaire. In this event, Concessionaire shall promptly reimburse City for the cost thereof provided that City shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs. City shall not be obligated to make any repairs to or maintain any improvements on the Premises. Concessionaire hereby expressly waives the right to make repairs at the expense of City and the benefit of the provisions of Sections 18.2.1 relating thereto if any there be. City has made no representations respecting the condition of the Premises, except as specifically set forth in this contract.

C. Removal and Restoration. At the expiration or sooner termination of this contract, Concessionaire at its own expense shall remove all personal property brought onto the Premises by Concessionaire. Concessionaire, at Concessionaire's expense, shall restore and repair the Premises, and any of Concessionaire's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.



MAINTENANCE PROJECT CONCESSIONAIRE REQUEST FOR APPROVAL

Name of Business		Date	
Concessionaire's Na	me:		
l requests must be submitted to		indicated in the Concession Agreem 182.2 Merchant's Obligations	ent, Article 18 Maintenance and
Maintenance Catego Plumbing Electrical Interior Painting	Pry: (Please check appropring Exterior Painting Roofing Carpentry	riate category(s)]LandscapingHeating and Air ConditioningMasonry	Termite Extermination OtherNeeds Dept. assistance
Need Plans Yes	No	Proposed Start Date:	Estimated Cost:
Maintenance Project Description	on;	•	
•			
	(Do not write below	w, El Pueblo Personnel only.)	
	(Do not write belov	w, Err ucolo i cisonnei oni <u>y</u> .)	
Museum Director's S	Signature of Appro	val	Date
Property Manager's	Signature of Appro	oval	Date
Project Evaluation Form Attacl	ned: Yes No		
******	******	*********	******
Proposal Denied: YesNo_			
Reason for Denial:			
General Manager's S	ianatura of Annua	vol	Date
General Manager 35	ignature of Appro	v 4.1	Bute

(The General Manager must approve the Maintenance Project before the Concessionaire can start)

CONCESSION AGREEMENT AFFADAVIT FOR TIER ONE B PHASE-IN RENT EXHIBIT G

the undersigned, under penalty of perjury that my concession business located at will be would not be profitable on an ongoing	y,
tertify that my concession dusiness located at $\frac{1}{2}\sqrt{\frac{1}{2}}$ would not be profitable on an originity	B
pasis and on a commercially sustainable basis with a reasonable profitability from	
2011 to 6 30 2012. I further certify that business revenues for the	
concession would not exceed expenses by 10% if I paid Tier One A rent as indicated in the Concession	
Agreement in Article 6, Rent 6.2.1. I understand that misrepresentation or falsification of this certification	n
or the records or documents submitted to support the application will be grounds for rejection of th	ıe
application and might subject the Concessionaire to civil and criminal liability.	
CONCESSIONAIRE:	
By: LA Golondy WA CAFE, INC. LTD	
Print Name	
VW, PRES.	ş
Signature	
C. KUAN 5	
CATTA CONM. # 1860312 7	
DATE: 6.30-11 LOS ANGELES COUNTY O	
DATE: 0 100 ANGELES COONS V	
A COLER LAWRED FOR THE STAND I	
County and State where signed:	

EXHIBIT G-1 CERTIFICATION OF HARDSHIP

I,		the undersigned,	under penalty of
I,	business located at		would not be
profitable on an ongoing basis and o	on a commercially s	sustainable basis	with a reasonable
profitability from certify that business revenues for the con	_2011 to		_2012. I further
certify that business revenues for the cor	ncession would not e	xceed expenses by	10% if I paid Tier
One A rent as indicated in the Concessi	_		
misrepresentation or falsification of this			
support the application will be ground		e application and	might subject the
Concessionaire to civil and criminal liab	oility.		
CONCECCIONAIDE.	,		
CONCESSIONAIRE:			
By:			
Print Name	·		
0'			
Signature			
	·		
DATE:			
County and State where signed:			

EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT CONCESSION AGREEMENT FINANCIAL HARDSHIP POLICY

FINANCIAL HARDSHIP

- 1) Who should apply? Any Concessionaire who has signed the City-approved 2011 Olvera Street Concession Agreement and claims that paying Tier One A or Tier One B rent would cause them a financial hardship as defined in the Concession Agreement Article 6.
- 2) In order to receive Tier Two Rent, the Concessionaire shall submit to an audit by the City Controller using the protocol and criteria described in Article 6 of the Concession Agreement.
- 3) Recommendation by the General Manager and Approval by the Commission After the City Controller has audited all records and documents as described in the Concession Agreement in Article 6 and confirmed the Concessionaire is eligible for Tier Two Rent due to a lack of profitability (where revenues exceed expenses by less than 10%), the General Manager will recommend to the Commission for approval Hardship Application and reduction in rent.
- 4) Other Supporting Documents The Concessionaire applying for Tier Two hardship rent shall timely make available all records and documents requested by the City Controller. Some of the records that might be requested by the City Controller include, but are not limited to, sales tax reported to the state, any bank records into which deposits or withdrawals are made relating to the concession, disbursements, including invoices or receipts for all expenses, totaling receipts from receipt books and/or cash register tapes and tracing to deposit records and bank statements, certified daily ledgers maintained by a Concessionaire of cash or other receipts and/or paid expenses.

SEND YOUR COMPLETED CERTIFICATION OF FINANCIAL HARDSHIP TO: Robert Andrade, General Manager El Pueblo de Los Angeles Historical Monument 125 Paseo de la Plaza, Suite 400 Los Angeles, CA 90012 Form Gen. 146 (Rev 3/09)

EXHIBIT H: INSURANCE REQUIREMENTS for Contractors, Vendors, Lessees, and Permittees doing business with the City of Los Angeles

	coverages checked below, with the specified minimur Amounts shown are Combined Single Limits ("CSL"). quals or exceeds the CSL amount.			ituted if the total po
				. <u>Limits</u>
<u>X</u> Wo	orkers' Compensation – Workers' Compensation (WC) and Employer's Liability	y (EL) WC EL	Statutory
X	Waiver of Subrogation in favor of City	☐ Longshore & Harbor☐ Jones Act	Workers	
X Ge	neral Liability			<u>\$</u> 1,000,000_
X X X	Products/Completed Operations Premises and Operations Contractual Liabilitywith 180 days rental interruption	Sexual Misconduct Collapse & Undergro Fire Legal Liability Independent Contrac	<u>\$</u> 100,000	
X Aut				
	ornobile Liability (for any and all vehicles used for th	s contract, other than commuti	ng to/from work)	\$ 1, 000.000 .
X Prof	omobile Liability (for any and all vehicles used for the essional Liability (Errors and Omissions) covery PeriodTwelve (12) months from cor			\$ 1,000,000 . \$ 1,000,000 .
X Prof	essional Liability (Errors and Omissions)	n <u>p</u> letion <u>of work or terminat</u>	ion of contract	<u>\$</u> 1,000,000,
X Prof Disc X Propurance	essional Liability (Errors and Omissions) covery PeriodTwelve (12) months from cor	n <u>p</u> letion <u>of work or terminat</u>	ion of contract company)	\$ 1,000,000, \$ Replacement Cost 80% co-
X Prof	essional Liability (Errors and Omissions) covery PeriodTwelve (12) months from corerty Insurance (to cover replacement cost of building Il Risk Coverage	npletion of work or terminat — as determined by insurance — Boiler and Machinery	ion of contract company)	\$ 1,000,000, \$ Replacement Cost 80% co-
X Prof	essional Liability (Errors and Omissions) covery Period Twelve (12) months from corerty Insurance (to cover replacement cost of building Il Risk Coverage Flood Earthquake	ngletion of work or terminat — as determined by insurance — Boiler and Machinery Builder's RiskFull	ion of contract company) value of construc	\$ 1,000,000, \$ Replacement Cost 80% co-

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker.)

- 1. Agreement/Reference All evidence of insurance must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the types of coverage and minimum dollar amounts specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.
- 2. When to submit Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For As-needed Contracts, insurance need not be submitted until a specific job has been awarded. Design Professionals coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.
- 3. Acceptable Evidence and Approval Electronic submission is the preferred method of submitting your documents. Track4LATM is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. Track4LATM advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access Track4LATM at http://track4la.lacity.org and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Insurance industry certificates other than the ACORD 25 may be accepted. All Certificates must provide a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable Alternatives to Acord Certificates and other insurance Certificates:

- A copy of the full insurance policy which contains a thirty (30) days' cancellation notice provision (ten (10) days for non-payment of premium) and additional insured and/or loss-payee status, when appropriate, for the CITY.
- Binders and Cover Notes are also acceptable as interim evidence for up to 90 days from date of approval.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Completed Insurance Industry Certificates other than ACORD 25 Certificates can be sent electronically (CAO.insurance.bonds@lacity.org) or faxed to the Office of the City Administrative Officer, Risk Management (213) 978-7616. Please note that submissions other than through

Track4LA[™] will delay the insurance approval process as documents will have to be manually processed.

Verification of approved insurance and bonds may be obtained by checking Track4LA™, the CITY's online insurance compliance system, at http://track4la.lacity.org.

- 4. Renewal When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate through Track4LA™ at http://track4la.lacity.org or submit an Insurance Industry Certificate or a renewal endorsement as outlined in Section 3 above. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.
- 5. Alternative Programs/Self-Insurance Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the Applicant's Declaration of Self Insurance form (http://cao.lacity.org/risk/InsuranceForms.htm) to the Office of the City Administrative Officer, Risk Management for consideration.
- 6. General Liability insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. Sexual Misconduct coverage is a required coverage when the work performed involves minors. Fire Legal Liability is required for persons occupying a portion of CITY premises. (Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.)
- 7. Automobile Liability insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.
- 8. Errors and Omissions coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.
- 9. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (http://cao.lacity.org/risk/InsuranceForms.htm). A Waiver of Subrogation on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.
- 10. Property Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. Builder's Risk/Course of Construction is required during construction projects and should include building materials in transit and stored at the project site.
- 11. Surety coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Crime Policy may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Bond Assistance Program website address at http://cao.lacity.org/risk/BondAssistanceProgram.pdf or call (213) 258-3000 for more information.

EXHIBIT I STATE DEED

SSL-403

When Recorded Mail To: 2 State Department of Parks and Recreation. P. O. Box 942896 3 Sacramento, CA 94296-0001 4 Attn: Betty Paris, Acquisition Division 5 Space above for Recorder's Use 6 STATE OF CALIFORNIA QUITCLAIM DEED 7 8 Pursuant to the provisions of Chapter 1358, Statutes of 1987, the STATE OF CALIFORNIA, acting through its Director of General Services, hereby 9 10 quitclaims to CITY OF LOS ANGELES, all its right, title and interest in and to 11 the real property described in Exhibit A hereto, which Exhibit is incorporated 12 herein by this reference, in the County of Los Angeles, State of California. 13 14 EXCEPTING AND RESERVING to the State of California all mineral 15 deposits as defined in Section 6407 of the Public Resources Code below a depth 00 16 of 500 feet, without surface rights of entry. V 17 18 This deed is subject to the following express conditions subsequent: 19 20 1. The property shall be known as El Pueblo de Los Angeles 21 Historic Monument and shall be used as a public park or monument. 22 σ, 7. 23 2. The development and operation shall conform to the General Plan 24 for El Pueblo de Los Angeles State Historic Park adopted April 11, 1980 25 pursuant to Section 5002.2 of the Public Resources Code. The Plan may be 26 amended by the CITY in accordance with procedures for amendment set forth in 27 Article 8 (commencing with Section 65450) and Article 9 (commencing with

> Form and Purpose Checked by Milliad

Section 6500) of Chapter 3 of Division 1 of Title 7 of the Government Code. The CITY shall consider the development criteria of Section 5019.59 of the Public Resources Code.

3. The City of Los Angeles shall operate, improve, maintain, construct, remodel, and perform any and all necessary activities at the Historic Monument in compliance with the U.S. Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures".

4. The State of California shall be allowed, at the STATE'S option, free occupancy of the existing STATE offices on the entire first and second floors of the Hellman Quan Building, located at 128 Paseo De La Plaza, Los Angeles, California (See Exhibit B, Sheet 1) incorporated herein by this reference, with the exception of the CITY Archives Room on the second floor (See Exhibit B, Sheet 2) together with four existing parking spaces located along Sanchez Street. Upon termination of parking along Sanchez Street, the CITY will provide four new parking spaces to be identified within future parking Lot No. 2 located on the corner of Main Street and Macy Street.

Should any of said express conditions be violated, the State of California shall have the right to reenter and take possession of the real property and upon such re-entry title thereto shall revert to the STATE.

-	IN WITHESS WHEREOF, THE STATE HAS CAUSED THIS QUITCHAIN DEED to be
2	executed this 27th day of October, 1988.
3	
4	STATE OF CALIFORNIA
5	DEPARTMENT OF GENERAL SERVICES W. J. ANTHONY, DIRECTOR
6	
7	By:
8	PAUL V. SAVONA, Chief Office of Real Estate
9	and Design Services
10	APPROVED:
11	DEPARTMENT OF PARKS AND RECREATION
12	By Lee Mi Cargo
13	By Lee Milarge
14	Attachment
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COURT PAPER STATE OF GALIFORNIA STD. 113 (REV. 8-72)

•	STATE OF CALIFORNIA
	COUNTY OFSACRAMENTO SS.
	On this 1st day of November , 19 88, before me, the undersigned, a Notary Public in and for the State of California, personally appeared PAUL V. SAVONA
	personally known to be or proved to me on the basis of satisfactory evidence to be the person who executed this instrument asChief of the _Office of Real Estate and Design Services. Department of General Services of the State of California, and acknowledged to me that the State of California executed it.
	WITNESS my hand and official seal.
<i>⊊.</i> ₽	OFFICIAL SEAL EUNICE I. MATLOCK EUNICE I. MATLOCK NOTARY PUBLIC - CALIFORNIA SACRAMENTO COUNTY My Comm Expires July 12, 1991 My Comm Expires July 12, 1991
	STATE OF CALIFORNIA)
_) ss. ———————————————————————————————————
,	On this 37 day of Colock, in the year of 198, before me, SUSAN P. HARRINGTON, a Notary Public in the State of California, duly commissioned and sworn, personnally appearred Les McCargo, known to me to be the Deputy Director of Parks and Recreation of the State of California and acknowledged to me that he executed the within instrument in the name of and in behalf of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county, the day and year first written above.

OFFICIAL SEAL
SUSAN P. HARRINGTON
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
My Comm. Expires Sept. 25, 1990

Notary Public

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All that real property situate in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

6 PARCEL 1

All those lands conveyed to the State of California by the McLaughlin Corporation by Corporation Grant Deed dated July 17, 1953 and recorded December 29, 1953 in Book 43478 at Page 430, Official Records of said County.

PARCEL 2

All those lands conveyed to the State of California by the Union Bank and Trust Company of Los Angeles, as Executor of the Estate of Constance D. Simpson, also known as Constance Doria Simpson, deceased, by Deed dated September 17, 1953 and recorded December 29, 1953 in Book 43481 at Page 359, Official Records of said County, and by Irving M. Walker, as Trustee, under the Will of Doria C. Lankershim, by Quitclaim Deed dated March 5, 1963 and recorded May 27, 1963 in Book D2043 at Page 496, Official Records of said County.

PARCEL 3

All those lands conveyed to the State of California by James A. Rimpau, Trustee, by Deed dated July 14, 1953 and recorded December 31, 1953 in Book 43498 at Page 295, Official Records of said County.

COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8-72 All those lands conveyed to the State of California by Los Nietos, Company, a corporation, by Deed dated August 4, 1953 and recorded December 31, 1953 in Book 43498 at Page 287, Official Records of said County and by Final Order of Condemnation dated March 2, 1961 and recorded March 3, 1961 as Document No. 4201 in Book D1143 at Page 905, Official Records of said County.

PARCEL 5

All those lands conveyed to the State of California by Mae N. Lombardi, et al. by Deed dated November 4, 1953 and recorded February 1, 1954 in Book 43717 at Page 437, Official Records of said County.

PARCEL 6

All those lands conveyed to the State of California by Quon How Shing by Deed dated August 28, 1953 and recorded February 26, 1954 in Book 43939 at Page 247, Official Records of said County.

PARC'EL 7

All those lands conveyed to the State of California by Audette Marie Garnier and Yvonne Garnier by Deed dated January 11, 1954 and recorded April 22, 1954 in Book 44389 at Page 74, Official Records of said County.

COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8-72) PARCEL 8

All those lands conveyed to the State of California by Stella Anne Valla Hamilton, et al. by Deed dated November 2, 1953 and recorded April 30, 1954 in Book 44460 at Page 218, Official Records of said County and by Final Order of Condemnation dated February 21, 1958 and recorded February 27, 1958 as Document No. 3409 in Book D27 at Page 369, Official Records of said County.

PARCEL 9

All those lands conveyed to the State of California by G. Pagliano and Dora C. Pagliano by Deed dated September 4, 1953 and recorded June 4, 1954 in Book 44735 at Page 317, Official Records of said County, and by Anita Brodrick, et al. by Quitclaim Deed dated April 21, 1958 and recorded September 18, 1958 in Book D220 at Page 181, Official Records of said County.

PARCEL 10

All those lands conveyed to the State of California by Paul Mance and Amalia Mance by Deed dated June 3, 1954 and recorded December 21, 1954 in Book 46434 at Page 81, Official Records of said County.

PARCEL 11

All those lands conveyed to the State of California by Title Insurance and Trust Company by Grant Deed dated March 13, 1956 and recorded September 28, 1956 in Book 52429 at Page 437, Official Records of said County.

COURT PAPER STATE OF CALIFORNIA STO. 113 IREV. 8-72

PARCEL 12 1 2 3 All those lands conveyed to the State of California by Final Order of Condemnation dated November 24, 1958 and recorded November 28, 1958 as 5 Document No. 5617 in Book D289 at Page 777, Official Records of said County. 6 7 PARCEL 13 8 9 All those lands conveyed to the State of California by Final Order of 10 Condemnation dated December 22, 1958 and recorded December 23, 1958 as 11 Document No. 4426 in Book D313 at Page 894, Official Records of said County. 12 13 PARCEL 14 14 15 All those lands conveyed to the State of California by Virginia Nicolas Miles, 16 et al. by Deed dated September 4, 1958 and recorded January 26, 1959 in 17 Book D343 at Page 528, Official Records of said County. 18 19 PARCEL 15 20 21 All those lands conveyed to the State of California by Final Order of 22 Condemnation dated January 22, 1959 and recorded January 30, 1959 as Document 23 No. 4155 in Book D350 at Page 540, Official Records of said County... 24 25 26 27

COURT PAPER STATE OF CALIFORNIA STO. 113 (REV. 8-72)

COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8.72 1 → PARCEL 20

All those lands conveyed to the State of California by Louis Foix, et al. by

Deed dated May 14, 1959\and recorded August 17, 1959 in Book D573 at Page 537,

Official Records of said County.

7 PARCEL 21

All those lands conveyed to the State of California by Rose Segale by Deed dated June 16, 1959 and recorded September 24, 1959 in Book D612 at Page 293, Official Records of said County.

PARCEL 22

All those lands conveyed to the State of California by the City of Los Angeles by Grant Deed dated April 17, 1959 and recorded September 22, 1959 in Book D609 at Page 712, Official Records of said County and by Quitclaim Deed dated January 26, 1961 and recorded April 15, 1961 in Book D1178 at page 907, Official Records of said County.

PARCEL 23

All right, title and interest to Sanchez Street between Arcadia Street and Plaza Street and to Plaza Street between Main Street and Los Angeles Street which the State of California may have acquired from Isabel J. Sepulveda Lugo, et al. by unrecorded Quitclaim Deed dated October 10, 1954.

PARCEL 24

All those lands conveyed to the State of California by the Los Angeles

Metropolitan Transit Authority by Grant Deed dated July 30, 1964 and recorded

October 1, 1964 in Book D2647 at Page 939, Official Records of said County,

and by Los Angeles Transit Lines by Quitclaim Deed dated June 1, 1955 and

recorded October 21, 1955 in Book 49303, at Page 341, Official Records of said

County.

0-1545Q '

COURT PAPER STATE OF CALIFORNIA STD. 113 (REV. 8-72) State of California

TO

The City of Los Angeles

JOB TITLE Acquisition of El Pueblo de Los Angeles Historic Monument

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real This is to certify that the interest in real property conveyed by the within deed or grant to The City of Los Angeles, a municipal corporation, is hereby accepted under the authority of the City Council of The City of Los Angeles, pursuant to Ordinance No. 123655, approved January 23, 1963, and the grantee consents to the recordation thereof by its duly authorized officer. officer.

D.,	flutor Traperes
ـــ و حــ	Authorized Officer

TITLE OFFICER

FEB 8 Date: .

> When Recorded Return to Director

Bureau of Right Way and Land DEPARTMENT OF PUBLIC WORKS City of Los Angeles

NOT A STANDARD INSTRUMENT Checked as to parties, marital status, dates, natures, acknowledgments and corporate s

> Engineering

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Approved as to Authority 1:53 SEngineering

Bureques Right Michigan Libra

Principal Real Estate Agent.

Approved as to descriptions.

RCBERT S. HORII City Engineer.

Deputy.

Approved as to form

JAMES K. HAHN

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Deputy.

D. M. 132A215,132A

Council File No. _

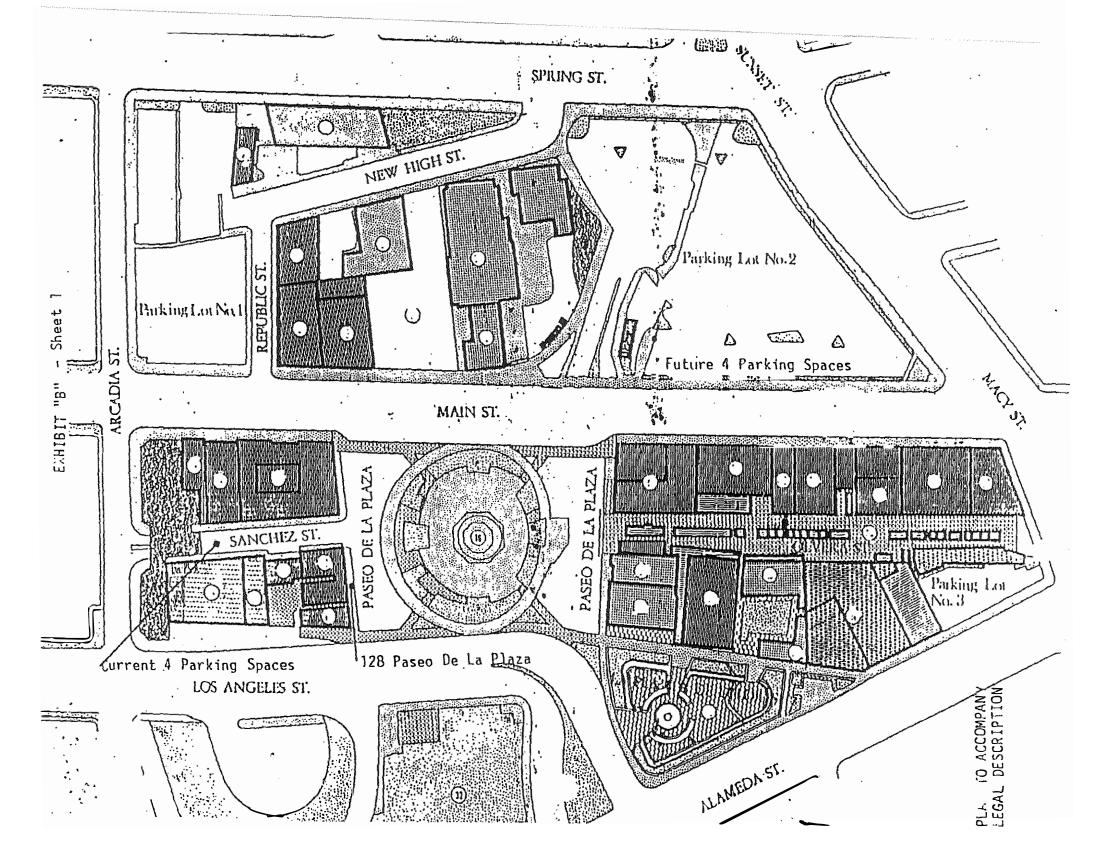
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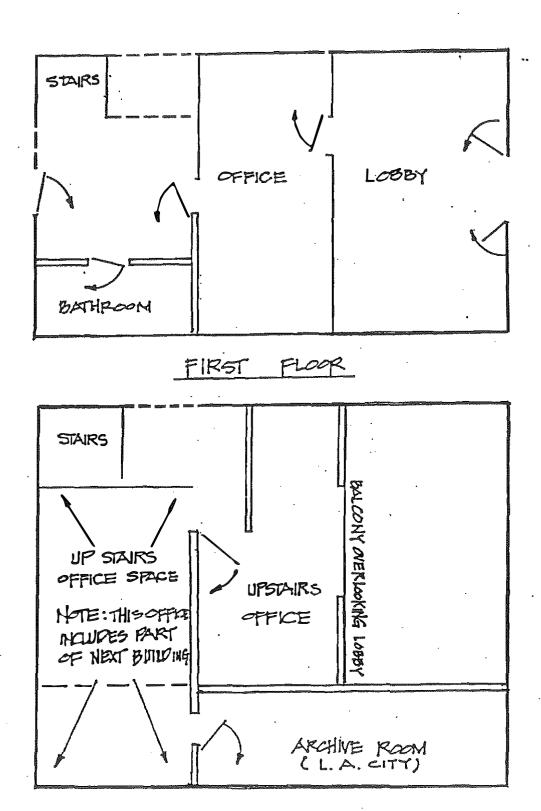
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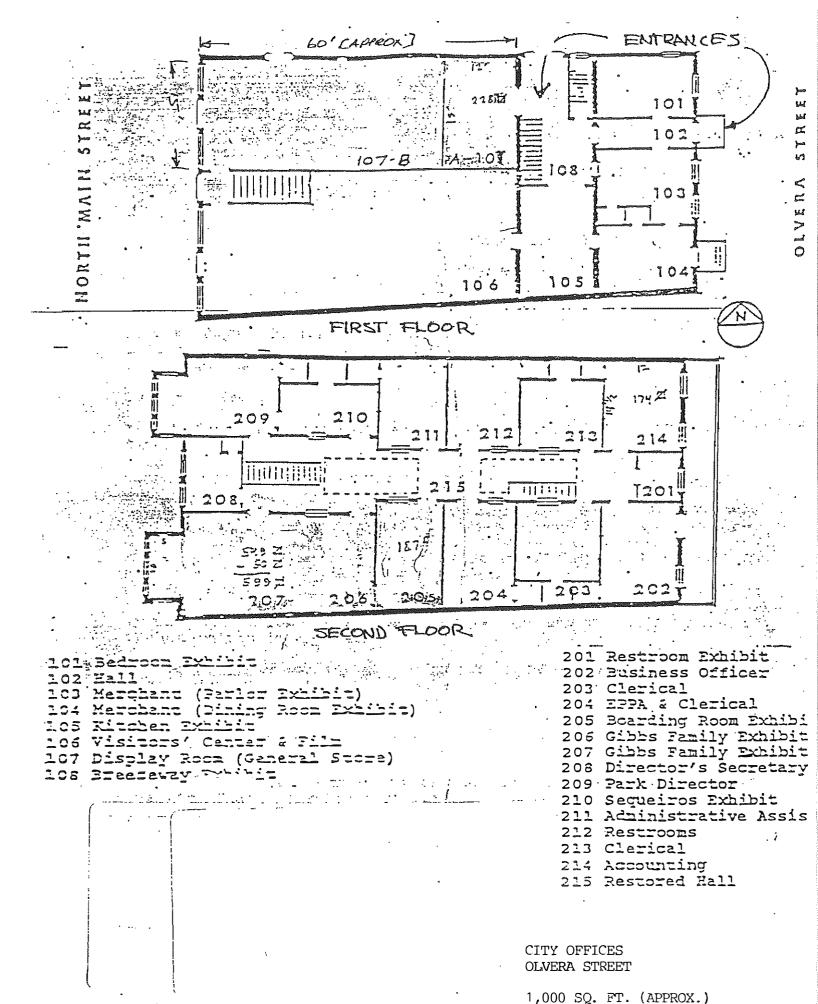
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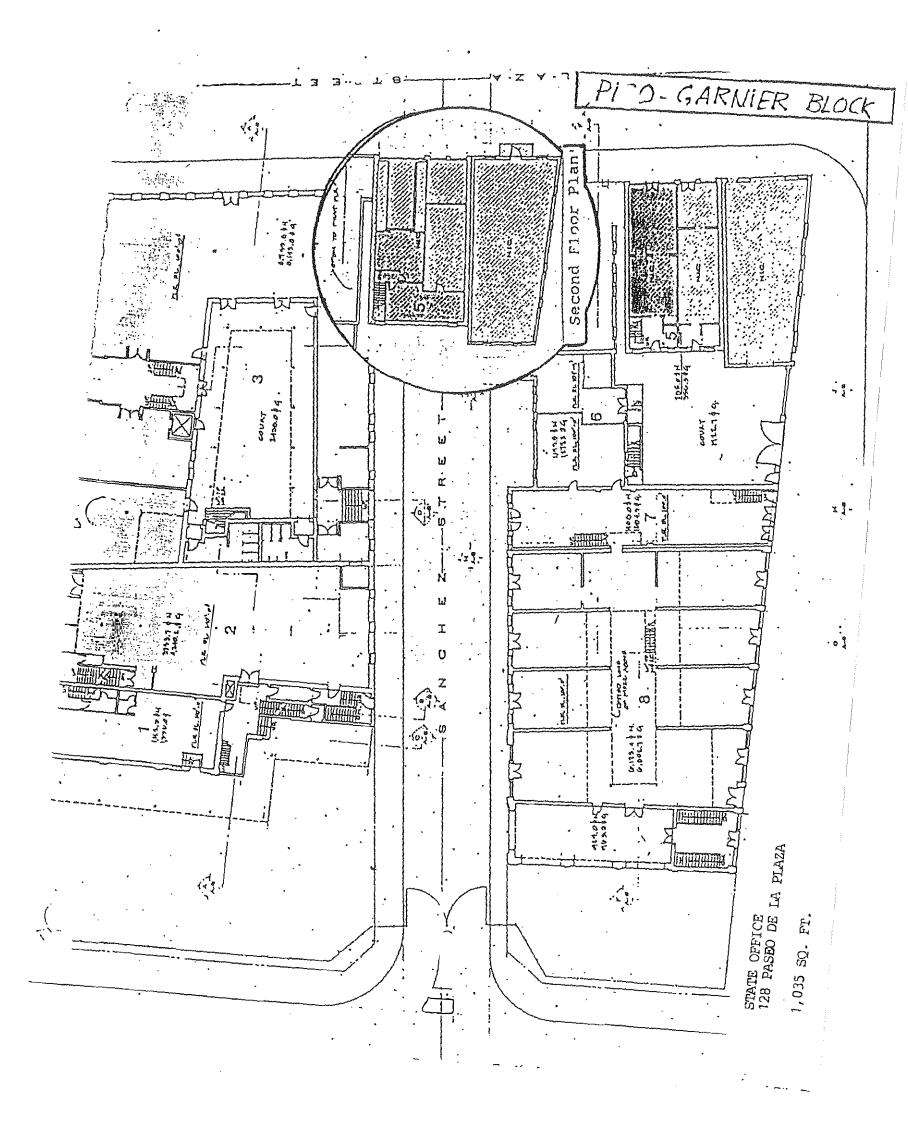




SECOND FLOOR

FLOOR PLAN TO ACCOMPANY LEGAL DESCRIPTION
128 Paseo De La Plaz Los Angeles, California





STANDARD PROVISIONS FOR CITY CONTRACTS EXHIBIT J

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the CITY or CONTRACTOR. The word "CONTRACTOR" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one CONTRACTOR herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the CITY'S option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. TIME OF EFFECTIVENESS

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;

- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the CITY by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC~9. WAIVER

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A

party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONTRACTOR thirty days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to affect such termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

- 1. Except for excusable delays as provided in PSC-7, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
- 2. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
- If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the CITY'S lobbying policies, then the CITY may immediately terminate this Contract.
- 4. In the event the CITY terminates this Contract as provided in this section, the CITY may procure, upon such terms and in such manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be

liable to the CITY for all of its costs and damages, including, but not limited, any excess costs for such services.

- 5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.
- 6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that CONTRACTOR was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
- 7. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the **CITY**

PSC-12. CONTRACTOR'S PERSONNEL

Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. The CITY shall have the right to review and approve any personnel who are assigned to work under this Contract. CONTRACTOR agrees to remove personnel from performing work under this Contract if requested to do so by the CITY.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to approve CONTRACTOR'S subcontractors, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONTRACTOR'S subcontractors, and nothing herein creates any privity between the CITY and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for CONTRACTOR'S performance hereunder and shall pay any fees required therefor. CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by CONTRACTOR hereunder), against CONTRACTOR'S rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the CITY. These records shall be retained for a period of no less than three years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this Contract or within the three years following final payment made by the CITY

hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20, INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, undertakes and agrees to defend, indemnify and hold harmless the CITY and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by CONTRACTOR or its subcontractors of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or

contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this Contract. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its subcontractors of any tier under this Contract, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this

requirement or to obtain the compliance of its subcontractors with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

PSC-24. INSURANCE

During the term of this Contract and without limiting CONTRACTOR'S indemnification of the CITY, CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by CONTRACTOR, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to CITY requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject CONTRACTOR to the imposition of any

and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either

- of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

- 3. Training and promotional opportunities; and
- 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S Contract with the CITY.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - CONTRACTOR shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- . C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because

- of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.

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- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONTRACTOR shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONTRACTOR must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONTRACTOR.
- M. The Affirmative Action Plan required to be submitted hereunder and the preregistration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;

- 2. Classroom preparation for the job when not apprenticeable;
- 3. Pre-apprenticeship education and preparation;
- 4. Upgrading training and opportunities;
- 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
- 6. The entry of qualified women, minority and all other journeymen into the industry; and
- 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the CITY.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the Principal Owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONTRACTOR will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONTRACTOR to obtain compliance of its subcontractors shall constitute a default by CONTRACTOR under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER_ RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
 - 1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July

- 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
- 2. CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONTRACTOR shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall deliver the executed pledges from each subcontractor to the CITY within ninety (90) days of the execution of the subcontract. CONTRACTOR'S delivery of executed pledges from each such subcontractor shall fully discharge the obligation of CONTRACTOR with respect to such pledges and fully discharge the obligation of CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
- 3. CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.
- 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.
- 5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that

such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due CONTRACTOR in accordance with the following procedures. Impoundment shall mean that from monies due CONTRACTOR, CITY may deduct the amount determined to be due and owing by CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY. CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

D. CONTRACTOR shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONTRACTOR shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONTRACTOR.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and its implementing regulations. CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by CONTRACTOR, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, as amended from time to time, which requires CONTRACTOR to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect CONTRACTOR'S fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONTRACTOR further agrees to: (1) notify the CITY within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this Contract;

(2) notify the CITY within thirty calendar days of all findings by a government agency or court of competent jurisdiction that CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH_ PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. CONTRACTOR shall not change any of these designated subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If CONTRACTOR fails to comply with the EBO the CITY may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONTRACTOR has set up or used its contracting entity for the purpose of

evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seg., Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

EXHIBIT K: MEMORANDUM OF CONCESSION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

CITY OF LOS ANGELES
EL PUEBLO DE LOS ANGELES HISTORICAL
MONUMENT AUTHORITY COMMISSION
c/o Office of the City Attorney
Carmen A. Trutanich, City Attorney
Real Property/Environment Division
200 North Main Street, Room 701 City Hall East
Los Angeles, California 90012-4870

Free recording in accordance with California Government Code section 6103

MEMORANDUM OF CONCESSION AGREEMENT

THIS MEMORANDUM OF CONCESSION AGREEMENT ("Memorandor of attestation by the City Clerk of the City of Los Angeles of page 2 of this Menthe CITY OF LOS ANGELES, a municipal corporation, acting by and three	norandum, by and between
LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION,	
agree as follows:	- · · · · · ·

1. Term And Premises.

City leases to Concessionaire, and Concessionaire leases from City, the real property located in the City of Los Angeles, County of Los Angeles, State of California, described as:

That certain premises (hereinafter "**Premises**") situated in the City of Los Angeles, County of Los Angeles, State of California, and identified as [Space-number______] as described in Exhibit A, commonly known as (Space Number_______), Olvera Street, Los Angeles, California 90012, for a term of Twenty (20) years, commencing upon attestation by the City Clerk, on the provisions of the Concession Agreement between the parties, which Concession Agreement ("Concession Agreement") is dated on the same date as this Memorandum. These provisions are incorporated into this Memorandum by reference.

2. Provisions Binding On Concessionaire.

The provisions of the Concession Agreement to be performed by Concessionaire, whether affirmative or negative in nature, are intended to and shall bind Concessionaire and its successors and assigns at any time, and shall inure to the benefit of City and its successors and assigns.

3. **Provisions Binding on City.**

The provisions of the Concession Agreement to be performed by City, whether affirmative or negative in nature, are intended to and shall bind City and its successors and assigns at any time, and shall inure to the benefit of Concessionaire and its successors and assigns.

4. Purpose of Memorandum.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the Concession Agreement.

MEMORANDUM OF CONCESSION AGREEMENT

5. Reference to Concession Agreement for All Purposes.

Reference is hereby made to the entire Concession Agreement for any and all purposes. A true copy of the Concession Agreement is on file with the City Clerk of the City of Los Angeles, whose office is Room 360, City Hall, 200 North Spring Street, Los Angeles, California 90012. APPROVED AS TO FORM: CARMEN A. TRUTANICH, City Attorney	CITY: CITY OF LOS ANGELES, a municipal corporation, acting by and through its EL PUEBLO DE LOS ANGELES HISTORICAL MONUMENT AUTHORITY COMMISSION By:
SPECIMEN — DO NOT SIGN	ROBERT ANDRADE General Manager
By:	DATE:
Deputy City Attorney	
DATE:	Ву:
SPECIMEN — DO NOT SIGN	DATE:
ATTEST: JUNE LAGMAY, City Clerk	
Ву:	
Deputy	
DATE:	

INDEX

State of California)
County of Los Angeles)
On Last Angeles Vivien Consueld before me, C. Kucin, Notary Public, personally appeared Bovizo, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature (seal) C. RUAN COMM. # 1860312 RIOTARY PUBLIC - CALIFORNIA D LOS ANGELES COUNTY O COMM. EXPIRES AUG. 7, 2013
State of California)
County of Los Angeles)
On before me,
me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature (seal)

FIRST SOURCE HIRING ORDINANCE	(FSHO) FORM: FSHO-X
Departmental Application for Exemption	CITY OF LOS ANGELES
	his form to Attn: EEOE, VIA FAX at (213) 847-2777 or
SCAN/EMAIL to becky balbuena@lacity.org for revi	
	PAREMENT BIOTNEOR MATTON
Dept: El Pueblo Contact Person: Property Management	Phone#: 213-485-8045 Email: ed.robles@lacity.org
Project Title (as listed in bid): Olvera Street Merchant Co	
SECTION II CON	TRACTOR INFORMATION
	Lettles Contractor Phone#: 626-392-3133
Designated Contractor Contact Person: VIVICO B	
Street Address: W-17B Olvera St	treet
City: Los Angeles State: Ca. Zip: 9	
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I am applying for this type of exemption (please use the s Section IV.	rame description you checked off on FSHO-D) then continue to
Descriptions	
SECTIONAL EXPLANATION OF THE PROPERTY OF THE P	ION FOR EXEMPITION REQUEST
	should be exempt from the FSHO. Attach additional sheets if
necessary, then continue to Section V. You may also attack	ch an Interdepartmental Memo in lieu of filling Section IV. BCA may
require additional documentation to supplement this form.	
The City's desire to continue the historic fabric of	Olvera Street is facilitated/preserved by renewing these
	merchants; therefore, we submit this exemption request
based on LAAC Section 10.44.9(f) and Charter S	
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receipt of a request for exemption and all supporting docum	nentation.
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EBO & SDO DETERMINATION

CITY OF LOS ANGELES

Office Contract Compliance 1149 S. Broadway, 3rd Floor Los Angeles, CA 90015 Phone: (213) 847-1922 - Fax: (213) 847-22777

OCC DETERMINATION EQUAL BENEFITS AND SLAVERY DISCLOSURE ORDINANCES

Contractors must be certified as complying with Los Angeles Administrative Code Section 10.8.2.1, Equal Benefits Ordinance (EBO), and Section 10.41. et seq., Slavery Disclosure Ordinance (SDO), prior to the execution, amendment, or renewal of an agreement. Attach this form to the agreement being processed to verify the Office of Contract Compliance (OCC) determination regarding the Contractor's compliance with the EBO and SDO.

	Name <u>La Golondrina Café, Inc</u>			Phone:	(626)	392-313
				•		87-0800
	•					90012
Contact Po	ersen: <u>Vivien Bonzo</u>					
SECTIO	N 2. EQUAL BENEFITS OF	RDINANCE				
Status:	Provisional Compliance					
	Provisional compliance status come into Full Compliance by agreements with the Contract amended after this date must	that date, payment du or may be subject to te	e the Contractor may be permination. Agreements	withheld, executed	and	
BECTION	I 3. SLAVERY DISCLOSUF	RE ORDINANCE	Date De	termined	: 06/3	0/2011
Status:	SDO Affidavit has been sub	<u>nitted.</u>				
	SDO Affidavit Executed On:	06/22/2011	SDO Affidavit Rec	eived On	: 06/2	3/2011
Comment None	S			ALANSAGA A		

CITY OF LOS ANGELES

CALIFORNIA



JOHN L. REAMER, JR, Imspector of Public Works and Director

Bureau of CONTRACT ADMINISTRATION 1149 S. Broadway, 3rd Floor Los Angeles, CA 90015

> (213) 847-1922 http://bca.lacity.org

PAULA A. DANIELS PRESIDENT PRO-TEMPORE

BOARD OF PUBLIC WORKS

MEMBERS

ANDREA A. ALARCON (ACTING BOARD PRESIDENT) VICE PRESIDENT

STEVEN T. NUTTER COMMISSIONER

VALERIE LYNNE SHAW COMMISSIONER

WILLIAM P. WEEKS EXECUTIVE OFFICER

June 23, 2011

Vivien Bonzo La Golondrina Café, Inc. West 17 Olvera St. Los Angeles, CA 90012

We received your EEO and Affirmative Action documents that you submitted to fulfill your contract requirement, as mandated by Los Angeles Administrative Code 10.8.4, and is approved as follows:

AFFIRMATIVE ACTION PLAN APPROVAL

PLAN NO: 16213

La Golondrina Café, Inc. West 17 Olvera St. Los Angeles, CA 90012

X Approved - Contractor completed, signed and submitted the City's Affirmative Action Plan.

Approved – Contractor submitted its own Affirmative Action Plan which meets the City's minimum requirements.

- APPROVAL EXPIRATION DATE: 7/1/2012
- This Plan is valid through the date shown above. The contractor may reference this approval for other City-funded contracts within the approval period. If the approval is 30 days or less from the expiration, the contractor must submit a new Plan to the Office of Contract Compliance and the Plan must be approved before any new contract is awarded.

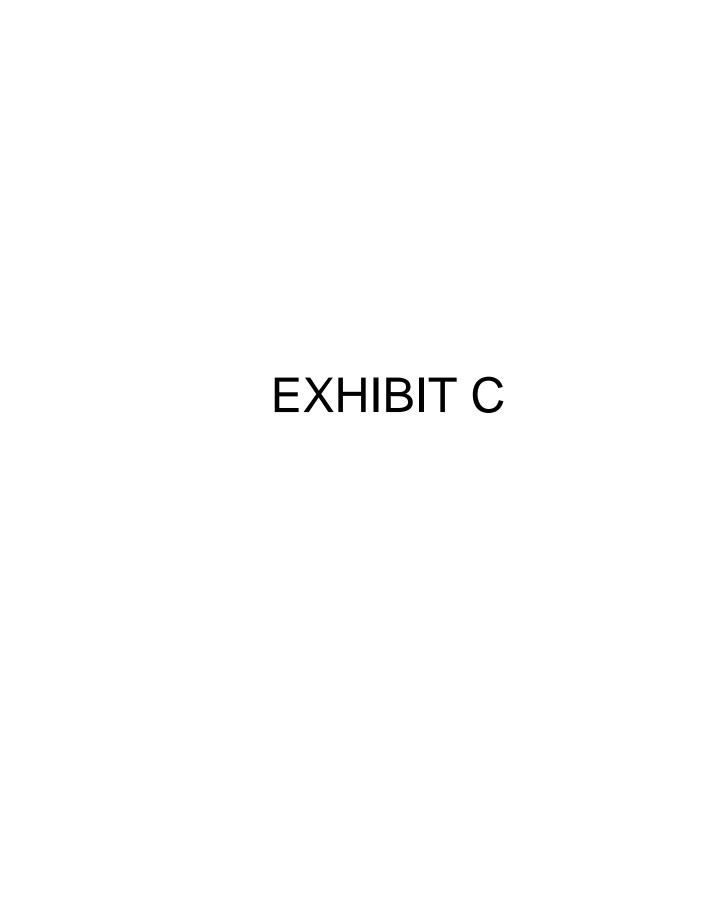
If you have any questions regarding this matter, please call Kim Fitzpatrick at (213) 847-2630. The Bureau of of Contract Administration, Office of Contract Compliance is located at 1149 S. Broadway St., Suite 300, Los Angeles, CA 90015.

Sincerely,

Helmut Peindl, &r. Management Analyst I

patruck for

EEOE Section Supervisor



STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against CITY or CONTRACTOR. The word "CONTRACTOR" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one CONTRACTOR, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to CONTRACTOR.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At CITY'S sole discretion, CITY may suspend any or all services provided under this Contract by providing CONTRACTOR with written notice of suspension. Upon receipt of the notice of suspension, CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to CITY until CITY gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CONTRACTOR thirty days written notice. Upon receipt of the notice of termination, CONTRACTOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to effect the termination. Thereafter, CONTRACTOR shall have no further claims against CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights CITY is entitled to, shall become CITY property upon the date of the termination. CONTRACTOR agrees to execute any documents necessary for CITY to perfect, memorialize, or record CITY'S ownership of rights provided herein.

B. Termination for Breach of Contract

- 1. Except as provided in PSC-6, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, CITY may give CONTRACTOR written notice of the default. CITY'S default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of CITY. Additionally, CITY'S default notice may offer CONTRACTOR an opportunity to provide CITY with a plan to cure the default, which shall be submitted to CITY within the time period allowed by CITY. At CITY'S sole discretion, CITY may accept or reject CONTRACTOR'S plan. If the default cannot be cured or if CONTRACTOR fails to cure within the period allowed by CITY, then CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
- 2. If the default under this Contract is due to CONTRACTOR'S failure to maintain the insurance required under this Contract, CONTRACTOR shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

- services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.
- If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then CITY may immediately terminate this Contract.
- 4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
- 5. Acts of Moral Turpitude
 - a **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. CITY has the right to review and approve any personnel who are assigned to work under this Contract. CONTRACTOR shall remove personnel from performing work under this Contract if requested to do so by CITY.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, CONTRACTOR shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by CONTRACTOR, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its Subcontractors, in performing the work under this Contract; or (2) as a result of CITY'S actual or intended use of any Work Product (as defined in PSC-21) furnished by CONTRACTOR, or its Subcontractors, under this Contract. The rights and remedies of CITY provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by CONTRACTOR or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of CITY for its use in any manner CITY deems appropriate. CONTRACTOR hereby assigns to CITY all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. CONTRACTOR further agrees to execute any documents necessary for CITY toperfect, memorialize, or record CITY'S ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- Α. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). CONTRACTOR shall notify CITY in writing as soon as reasonably feasible, and in any event within twenty-four hours, of CONTRACTOR'S discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by CITY, regarding findings and actions performed by CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to CITY'S satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with CITY. At CITY'S sole discretion, CITY and its authorized agents shall have the right to lead or participate in the investigation. CONTRACTOR shall cooperate fully with CITY, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY'S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR'S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract. Failure of CONTRACTOR or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network ("BAVN") at https://www.labavn.org/, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the "Restricted Persons")

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles CITY to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this Contract is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # . Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

PSC-38. Contractors' Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City's Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for CITY to comply with its governing legal requirements, CITY shall have no obligation to make any payments to CONTRACTOR unless CITY shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. CONTRACTOR agrees that any services provided by CONTRACTOR, purchases made by CONTRACTOR or expenses incurred by CONTRACTOR in excess of the appropriation(s) shall be free and without charge to CITY and CITY shall have no obligation to pay for the services, purchases or expenses. CONTRACTOR shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

PSC-44. COVID-19

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, "Contractor Personnel"), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, "In-Person Services") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19"). "Fully vaccinated" means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions ("Exemptions") to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- **3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- **4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- **5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

- 7. California Licensee. All insurance must be provided by an insurer <u>admitted</u> to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.
- **8.** Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.
- **9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name:	Date:	
Agreement/Reference:		
Evidence of coverages checked below, with the spectrum occupancy/start of operations. Amounts shown are Commay be substituted for a CSL if the total per occurrence	mbined Single Limits ("CSLs"). For Automobile	
Workers' Compensation (WC) and Employer's Lia	ability (EL)	
		W <u>C Statutory</u>
☐Waiver of Subrogation in favor of City	☐Longshore & Harbor Workers☐Jones Act	<u>EL</u>
General Liability		
☐ Products/Completed Operations ☐ Fire Legal Liability	Sexual Misconduct	
Automobile Liability (for any and all vehicles used for	this contract, other than commuting to/from work)	
Professional Liability (Errors and Omissions) Discovery Period		
Property Insurance (to cover replacement cost of build	ling - as determined by insurance company)	
☐ All Risk Coverage ☐ Flood ☐ Earthquake	☐ Boiler and Machinery ☐ Builder's Risk ☐	
Pollution Liability		
Surety Bonds - Performance and Payment (Labor and	d Materials) Bonds	
Crime Insurance		
Other:		